Supreme Court, U.S.
FILED

09-613 SEP 28 2009

Docket No. OFFICE OF THE CLERK

IN THE
UNITED STATES SUPREME COURT

JEFFERSON A. McGEE
Petitioner;

V.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO
Respondent;

SORA L. McGEE
Real Party in Interest;

On Petition For Writ Of Certorari To The Supreme Court Of California.

PETITIONER FOR WRIT OF CERTIORARI

Jefferson A. McGee, Attorney Pro Se
5617 Bonniemae Way
Sacramento, California 95824
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QUESTION PRESENTED

The defendants below, Petitioner here, is an African American citizen of the United States that resides in a state who's officers, municipalities, agencies, and citizens are discriminating against him and other African Americans on the grounds of race and color in law enforcement programs and activities. Relevant federal statutes preclude the discrimination against African Americans by programs and activities receiving federal financial assistance. Petitioner is being evicted by the State of California of the grounds of his race and color. Thus the question presented in this petition is:

May the State of California evict petitioner and his family from the property located at 5617 Bonniemae Way Sacramento, California 95824 on the grounds of their race and color through the use of programs and activities receiving federal financial assistance; and if not, is the State of California immune under the Eleventh Amendment to the United States Constitution from suit in federal court for damages and cost incurred by petitioner and others to defend themselves against the State of California discriminating against them in programs and activities receiving federal financial assistance?

PARTIES TO THE PROCEEDINGS

The following defendant, Petition here asserted a defense in the trial court:

Jefferson A. McGee

The following defendant also asserted a defense in the trial court:

Julia A. McGee

The following Court, Respondent entered a judgment in the underlying unlawful detainer action after a trial:

The Superior Court of California, County of Sacramento

The following, Plaintiff, Real Party in Interest, asserted claims in the trial court:

Sora L. McGee

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Supreme Court, Rules, Petitioner affirms that he has no parent company and is not publicly-owned company.

TABLE OF CONTENTS

Question Presented i
Parties to the Proceedings ii
Table of Contents iii
Index to Appendices iv
Citation of Opinion and Orders 1
Statement of Jurisdiction 1
Constitution And Statutes Involved In The Case 1
Introduction 1
Statement of Case 6
Factual Background 6
Proceedings Below 8
Federal Question Presented 17
Summary of Argument 19
Argument 27

REVIEW SHOULD BE GRANTED BECAUSE THE CALIFORNIA SUPREME COURT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE DECIDED BY THIS COURT.

CONCLUSION 35

INDEX TO APPENDICES

Order of the Supreme Court of California denying Petition for Review filed August 19, 2009 in Case No. S174388 .....App 1

Order of Court of Appeal of the State of California in and for the Third Appellate District denying petitioner's Request for Judicial Notice and Petition for Writ of Mandate or Prohibition filed June 4, 2009 in case No. C062003 .....App 2

Order from Superior Court of California Sacramento Appellate Division Denying Rehearing March 18, 2009 .....App 3

Order of Superior Court of California County of Sacramento Appellate Division affirming judgment filed on February 20, 2009 in case No. 07UD05837 .....App 4

Order of Superior Court of

California, Sacramento
pertaining to Petition of
Writ of Mandate or
Supersedes or prohibition
September 19, 2008 .....App 6

Order of the Superior Court
of California Unlawful
Detainer Division entering
final judgment filed on
September 3, 2008 .....App 8

Order of the Superior Court
of California Unlawful
Detainer Division Regarding
Motion for Summary
Judgment entered
September 2, 2008 .....App 10

Request for Rehearing in
the Superior Court of
California Appellate
Division March 9, 2009 .....App 11

Real Party In Interest's
Response to defendant
Motion for Summary
Judgment filed August 27, 2008 .....App 33

Defendant's Request for
Summary judgment filed

August 22, 2008 .....App 35

Amended Complaint for
Unlawful Detainer .....App 50

Complaint for Unlawful Detainer .....App 53

Order of Findings and
Recommendations from the
United States District Court
for the Eastern District of
California in the matter of
McGee et. al. v. Segraves Et. Al., ...App 57

TABLE OF AUTHORITIES CITED

Cases

1. *Adickes v. S.H. Kress & Co.*
98 U.S. 144 29

2. *Adoption of Alexander S.*
44 Cal. 875, 245 Cal Rptr. 1,750 p. 77.....31

3. *Aguilar v. Atlantic Richfield* (2001)
24 4th 826, 849 31

4. *American Land Co. V. Zeiss* (1911)
219 US 47 32

5. *Anders v. California* (1967)
386 US 738 26

6. *Barrington v. A.H. Robin Co.*
39 C 3d 146, 216 CR 405 31

7. *Burton v. Wilmington Park Authority* (1961)
365 U.S. 715, 723-725 29

8. *Francis v. West Virginia Oil Co.* (1971)
174 C 168, 162 31

9. *Georgia v. Rachel* (1965)
984 US 780 26

10. *Guardian Assn. v. Civil Serv. Comm'n NYC*
(1983)

463 U.S. 582, 593-595 .....21, 33

11. *Hill v. Gauteavy* 1976
425 U,S, 284 21

12. *In re Jefferson Arnold McGee on Habeas Corpus*
Supreme Court of California No. S174654 ..18

13. *Jefferson Arnold McGee on Habeas Corpus*
The Court of Appeal Third Appellate District
No. C04981 18

14. *Klein v. Loefler* (1929)
274 P. 373, 96 Cal App 338 31

15. *Lugar v. Edmondson Oil Co.* (1982)
457 U.S. 922, 941-942 29

16. *McGee v. McGee Et. Al.,*
07UD05837 .....7, 14, 19, 28, 29

17. *McGee v. CA State Senate Et. Al.,*
2007 U.S. Dist.Ct LEXIS 94250 ..6,18,20,23,33

18. *McGee v. Hildebrand*
01-8439 35

19. *McGee Et. Al. v. Seagraves Et. Al.,*
U.S. Dist. Court Eastern District
06-CV-00495-MCE-GGH 10,14,18,23,33

20. *McGee Et. Al. v. Seagraves Et. Al.*
Superior Court, County of Sacramento No. 06AS05145 10,14,18

21. *Monroe v. Pape* (1961)
365 U.S. 167, 173-174 29

22 *P.R. Co. v. Mackey* (1888)
127 US 205 32

23. *People v. Miller*
72 CA 607 26

24. *People v. McGee*
Court of Appeal Third Appellate District No. C049881 25

25. *People of the State of California v. McGee*
No. 03F11189 24

26. *Tracy v. Ginzberg* (1907)
205 U.S. 170 32

27. *Tumy v. Ohio* (1926)
273 US 522 26

28. *University of California Regents v. Bakke*
(1978) 438 US 265 21

CONSTITUTIONAL PROVISIONS

1.) The Sixth Amendment to the United States Constitution 32
2.) The Eleventh Amendment to the United States Constitution 2
3.) The Fourteenth Amendment to the United States Constitution, §1 32

STATUTES

1.) Title 28 USC 1257 1
2.) Title 42 USC § 1981 5,6,7,12,17,26,29,30,32
3.) Title 42 USC § 1982 5,6,7,12,17,26,29,30,32
4.) Title 42 USC § 2000 5,6,7,12,17,26,29,30,32
5.) Title 18 USC § 241 33
6.) Title 18 USC § 242 33
10.)Title 18 USC § 245 33
11.)Title 18 USC § 1512(b).....33

CALIFORNIA STATE STATUTES

1.) Cal Code of Civil Procedure § 437c 6
2.) Cal Code of Civil Procedure § 446 31
3.) Cal Code of Civil Procedure § 1161 31
4.) Cal Code of Civil Procedure § 1166 31
5.) Cal Code of Civil Procedures §1170.7 31

6.) Cal Government Code § 68081 31
7.) Cal Government Code § 11135-11139.5 34
8.) Cal Civil Code § 51 33
9.) Cal Civil Code § 52 33

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of California.

STATEMENT OF JURISDICTION

The date the judgment or order sought to be reviewed was entered was August 19, 2009. No request for rehearing was made. The statutory provisions believed to confer on this court jurisdiction to review on a Writ of Certiorari the judgment or order in question is Title 28 USC § 1257(a).

OPINIONS BELOW

The decision of the Supreme Court of California is reprinted at App. 1. The decision of the California Court of Appeal is printed at App 2. The decision of the California Superior Court is reprinted at App 3 and 4. The judgment of the California Superior Court Unlawful Detainer Division is reprinted in App 5.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VI of the Civil Rights Act of 1964 are relevant to the disposition of this case. Te relevant constitutional provisions and statutes read as follows:

AMENDMENT XI

> **Amendment 11 - Judicial Limits.** The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

USC TITLE 42 § 2000

Section 2000d-7.

Prohibition against exculsion from participation in, denial of benefits of, and discrimination under federally assisted programs on grounds of race, color, or national origin. *No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.*

Section 2000d-7. Civil rights remedies equalization.

(a) General provision. (1) A state shall not be immune under the Eleventh Amendment of the Constitution of the Unted States from suit in federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 USCS §794], title IX of the Education Act of 1975 [42 USCS §6101 et. seq.], the Age Discrimination Act of 1975 [42 USCS § 1681 et. seq.] title VI of the Civil Rights Act of 1964[42 USCS

§2000d et. seq.],or the provision of any other Federal Statutes prohibiting discrimination by recipients of federal financial assistance.

(2)In a suit against a state for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation the same extent as remedies are available for such a violation in the suit against any public or private entity other than a state.

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INTRODUCTION

This case questions whether officials, municipalities and agencies of the State of California participation in a vast racially motivated conspiracy to violate petitioner and other African American's civil rights constitutes a state action, or whether these officials, municipalities, and agencies of the State of California can use law enforcement programs and activities receiving federal financial assistance to carry out the object of their racially motivated conspiracy to violate petitioner's and other s civil rights. More specifically, the question is may the State of California evict petitioner and his family from their home on the grounds of their race and color through the use of law enforcement programs and activities receiving federal financial assistance. The Supreme Court of California held that the State of California could evict petitioner and his family from their home on the grounds of race. Whether it was right should be reviewed by this Court.

Title VI of the Civil Rights Act of 1964 is set forth in 42 U.S.C § 2000d et. seq. and applies to federal assisted programs in general, and provides:

> No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program activity receiving federal assistance.

Title 42 U.S.C. §2000d-7 provides:

> (1) A state shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in federal court for a violation of section ... Title VI of the Civil Rights Act of 1964, or provisions of any other federal statutes

prohibits discrimination by recipient of federal financial assistance;

(2) In a suit against a state for violation of a statute referred to in paragraph (1), remedies (including remedies both at law and equity) are available for such violation to the same extent as remedies are available for such a violation in the suit against any public or private entity other than a state.

It is unquestionable that the filing and prosecution of the underlying unlawful detainer action was a state action done in furtherance of a racially motivated conspiracy which is depriving petitioner of his rights secured by Title 42 U.S.C. §§ 1981, 1982 and 2000. Thus, the question is squarely presented in this case: may the state of California evict petitioner and his family from the property at issue here on the grounds of their race and color through the use of programs and activities receiving federal financial assistance, and, if so, is the State of California immune under the Eleventh Amendment to the United States Constitution for damages and costs accrued by petitioner and others as a result of having to defend themselves from the State of California's discriminating against them through the use of programs and activities receiving federal financial assistance.

This question is important for the public and legal profession, and it is squarely presented in this case. Congress has, by way of Title VI of the Civil Rights Act of 1964 and the Civil rights Act of 1866 and 1871, expressed a significant national interest in protecting the civil rights and safety for African Americans. At this time the State of California discriminating against African Americans in law

enforcement programs and activities is prevalent. Whether the interest of the nation and congress is interfeared with by allowing the State of California to evict petitioner and his family from their home on the grounds of their race and color through the use of programs and activities receiving federal financial assistance is at stake in this case. That question merits review by this Court.

STATEMENT OF CASE

A. Factual Background

This action arises from officials of the State of California's contempt for the Constitution and Laws of the United States. In this action officials of the State of California have demonstrated their contempt for the Constitution and Laws of the United States by participating with Thomas Hogan and others in a vast racially motivated conspiracy to violate petitioner's and other persons rights secured by Title 42 U.S.C. §§ 1981, 1982 and 2000, and promulgating a policy of discriminating against petitioner and other African Americans on the grounds of race in law enforcement programs and activities. (*See McGee v. CA State Senate Et. Al.*, 2007 U.S. Dist. Court LEXIS 94250)

In furtherance of the object of the conspiracy set forth in the petition, Thomas M. Hogan, California State Senate, California State Assembly, California State Senator Don Perata, California State Assembly Member Fabian Nunez, California Governor Arnold Schwarzenegger, California

Attorney General Bill Lockyear, the County of Sacramento, the City of Sacramento, the City of Elk Grove, Heather Fargo, Jan Scully, Lou Blanas, and other persons conspired or aided and incited other persons to commit the following wrongs against petitioner and his family: attempted murder; kidnap; attempted kidnap; torture; assault with a deadly weapon; assault; battery; intimidation by threats of violence; extortion; false imprisonment; malicious prosecution; robbery; burglary; breaking and entering into petitioner's and his family's property; perjury; forgery; unlawful sexual conduct; and unlawful search and seizure, causing petitioner and his family to lose income and inciting Mark McGee and Gary L. Link to use fraud and perjury to commence the unlawful detainer action set forth in the petition.[1] *App. 35, 50 & 53.*

Thomas M. Hogan did all actions mentioned in the petition in furtherance of the conspiracy set forth in the petition and for the purpose of punishing petitioner and his family for exercising and asserting their rights secured by Title 42 U.S.C. §§ 1981, 1982, and 2000.

The underlying unlawful detainer action involves a dispute over possession of the property commonly known as 5617 Bonniemae Way Sacramento, California 95824, the action was filed in respondent court's Unlawful Detainer Division on July 12, 2007, and is entitled *McGee v. McGee Et. Al.* No. 07UD05837.[2] In furtherance of the conspiracy

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[1] Heather Fargo was the Mayor of the City of Sacramento, Jan Scully is the District Attorney of Sacramento County, and Lou Blanas was the Sheriff of Sacramento County.

[2] The Richard C. and Sora L. McGee Family Trust is the legal owner of the property involved in this action. Sora L. McGee is the Trustee and Richard C. McGee, Jr., Dean E. McGee, Rinnetta D. McGee, Mark McGee, Jefferson A

set forth in the petition, on April 3, 2006 Thomas M. Hogan, attorney for the real party in interest, conspired with officials of the State of California to use intimidation, threats of violence, threats of arrest, fraud, deceit, trickery, and perjury to unlawfully forcibly enter and detain petitioner's residence located at 8553 Iris Crest Way Elk Grove, California 95624 and has continued to unlawfully detain the above-mentioned property to this day. As a direct and proximate result of Thomas M. Hogan's actions set forth in the petition, petitioner and his family began living at the property described as 5617 Bonniemae Way Sacramento, California 95824.

The following procedural facts are set forth in the verified Petition for Writ of Mandate or Prohibition.

B. Proceedings Below

On May 2, 2007 Gary L. Link attorney for the real party in interest vexed petitioner by serving petitioner and his family a 60-day termination of tenancy notice with attachments although it was clear to Gary L. Link that no landlord-tenant relationship existed between the real party in interest and petitioner.

On July 11, 2007 Gary L. Link Attorney At Law A Professional Law Corporation and Gary L. Link prepared a meritless and frivolous complaint alleging petitioner and Julia McGee were guilty of an unlawful detainer pertaining to the subject property.

McGee, Sora E. J. McGee, and Thomas McGee are beneficiaries. Richard C. McGee Sr was deceased prior to this action being filed.

Also, on July 11, 2007 Gary L. Link worked in concert to have Mark McGee subscribe and verify the complaint while having actual knowledge that Mark McGee did not own the property at issue in the complaint, and that Mark McGee was not the authorized agent for the owner of the real property described in the unlawful detainer action.

On July 12, 2007 Gary L. Link Attorney At Law A Professional Law Corporation and Gary L. Link filed the complaint in respondent court's Unlawful Detainer Division while having actual knowledge that Mark McGee's signing of the complaint constituted a conflict of interest, and a fraud on respondent court.

The complaint did not allege the existence of a lease or rental agreement (oral or written) and did not allege that defendants entered into possession under a lease or rental agreement.

On the face of the complaint it was clear that no landlord-tenant relationship existed between the parties.

On July 23, 2007 petitioner filed a motion to quash the service of the summons on the grounds that: petitioner was not served with a copy of the summons and complaint as required by §§ 415.10 – 415.45 and 1167 of the code of civil procedure; no landlord-tenant relationship exists, thus the complaint does not state a cause of action; the complaint was uncertain, ambiguous and unintelligible; the 5-days to answer requirement violates the equal protection clause and due process clause of both the federal and state constitutions; and the action was completely without merit.

On August 1, 2007 respondent court's Unlawful Detainer Division granted petitioner's motion to quash and granted plaintiff's request for leave to amend.

During the period of July 2007 and July 2008 Gary L. Link, Thomas Hogan, Mark McGee, and Thomas McGee began working in concert to deceive the real party in interest into continuing to prosecute the unlawful detainer action while having actual knowledge that the complaint was filed by use of fraud and perjury, and that the complaint could not in good faith be amended to state a cause of action for an unlawful detainer.

On August 1, 2008 Thomas Hogan prepared a sham amended complaint and induced petitioner's seventy-nine year old mother (the real party in interest) to subscribe and verify the amended complaint while having actual knowledge that the amended complaint was false and meritless.

On August 6, 2008 Thomas Hogan attorney at law filed the sham amended complaint in respondent court's Unlawful Detainer Division to harass petitioner and his family, while knowing the allegations and other factual contentions in the amended complaint did not have evidentiary support.

On August 12, 2008 Thomas Hogan, Gary Link, and State Officials conspired to deter by intimidation and threats petitioner and Julia A. McGee who were parties in respondent's court action entitled *McGee et. al. v. Seagraves et. al.* No. 06AS05145 from attending such court

by serving petitioner the sham amended summons and complaint in Department 59 of respondent court during a Mandatory Settlement Conference in the action set forth in this paragraph. [3]

The amended complaint was based on a completely different set of facts than the original complaint.

On August 25, 2008 petitioner filed and served a Notice and Motion for Summary Judgment and Summary Adjudication on the grounds that there were no genuine issues of material facts as to the real party in interest's cause of action and petitioner was entitled to a judgment as a matter of law. The motion for summary judgment and summary adjudication was based on the code of civil procedure § 437c, the declarations of Jefferson A. McGee and Julia A. McGee, the attached memorandum of points and authorities, the separate statement of undisputed facts, the request for judicial notice, and all papers, records, and documents on file.

On September 2, 2008 during hearing on petitioner's motion for summary judgment or summary adjudication, neither Thomas Hogan nor the real party in interest objected to any of the fourteen separate undisputed facts set forth by petitioner in the motion for summary judgment as required by California Code of Civil Procedure § 437c.

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[3] *McGee Et Al., v. Seagraves Et Al* is an action for unlawful forcible entry and unlawful forcible detainer alleging that Margaret Seagraves and her agents worked in concert with officials of the State of California and used intimidation and threats of violence to unlawfully evict petitioner from the property known as 8553 Iris Crest Way Elk Grove, California 95624. Thomas M. Hogan Attorney at Law is representing Seagraves and her agents in said action.

Also, on September 2, 2008 respondent court's Unlawful Detainer Division denied petitioner's motion for summary judgment or summary adjudication, although based on the undisputed facts no triable issue of material facts existed and petitioner was entitled to summary judgment.

On September 3, 2008 the unlawful detainer action went to trial in respondent court's Unlawful Detainer Division.

During the trial, Mark McGee testified that he was not a licensed real estate broker, and was not the authorized agent of the real party in interest, for the property described in the unlawful detainer.

Also, during the trial, Thomas Hogan continued to prosecute the unlawful detainer action although he heard testimony from Mark McGee that affirmed the fact that Mark McGee was not the authorized agent for the real party in interest.

During the trial described in the petition, judgment was entered in favor of the real party in interest for possession of the property at issue in the unlawful detainer action. The judgment was entered based on the fact that Mark McGee was the authorized agent for the property described in the complaint for unlawful detainer, although Mark McGee was not the authorized agent of the real party in interest for the property at issue in the unlawful detainer action.

The judgment of respondent court's Unlawful Detainer Division's in the underlying unlawful detainer action was obtained through fraud and perjury.

On September 9, 2008 petitioner filed a Notice of Appeal in respondent court's Appellate Division appealing the judgment at issue in these proceedings.

Also, on September 9, 2008 petitioner moved the trial court to stay the judgment and set forth facts that the complaint was filed without probable cause and for the purpose of harassing and maliciously injuring defendants to punish them for exercising and asserting their rights secured by Title 42 U.S.C. §§ 1981, 1982, and 2000. The trial court denied petitioner's request for a stay.

On September 10, 2008 petitioner filed a Writ of Mandate or Superseded or Prohibition in respondent court's Civil Division requesting a stay of the judgment set forth in the petition.

On September 19, 2008 respondent court's deemed the writ to be a motion for reconsideration of the order denying summary judgment and respondent court on its own motion ordered consolidation for all purposes the case of *Jefferson A. McGee and Julia A. McGee* No. 34-2008-80000050-CU-WM-GDS with petitioners appeal.

On October 23, 2008 respondent court's Appellate Division issued an order in the action informing petitioner that petitioner had not deposited the fee for the reporter's transcripts and also informing petition that if the fees were not timely deposited the record would be prepared without the reporter's transcripts.

Also, from October 17, 2008 through October 23, 2008 Thomas M. Hogan, Mark McGee, Thomas McGee and other

persons conspired with officials of the State of California to use intimidation, threats of violence, and threats of arrest, in an attempt to unlawfully force petitioner and his family to abandon the subject property.

On October 23, 2008 Thomas Hogan, Mark McGee, Thomas McGee, the Sheriff of Sacramento County John McGuiness, and the County of Sacramento conspired to deter by force, intimidation, and threats petitioner and Julia A. McGee who were parties and witnesses in respondent court's case entitled *McGee et. al. v. Seagraves et. al.* No. 06AS05145 and *McGee v. McGee et. al.,* 07UD05837 from attending such court and from testifying to matters pending therein, freely, fully and truthfully and to injure petitioner and Julia A. McGee in their persons and property on account of having so attended and testifying by unlawfully forcibly entering and detaining the subject property.

The unlawful forcible entry and detainer of the subject property obstructed the administration of justice in the appellate proceedings because it prevented petitioner from timely depositing the court reporter fees or making other arrangements as required by respondent court's order.

The unlawful forcible entry also obstructed the administration of justice in respondent court's case entitled *McGee Et. Al., v. Seagraves, Et. Al.,* No. 06AS05145 by preventing petitioner access to his court files the day before the trial.

On December 16, 2008 petitioner filed an opening brief pointing to evidence that Thomas Hogan and Gary Link

had used fraud and perjury to obtain a judgment in the underlying unlawful detainer action and served copies of the Opening Brief on Edmund G. Brown Jr., Attorney General for the State of California and Jan Scully the District Attorney of the County of Sacramento.

As a direct and proximate result of the unlawful forcible entry and detainer of the subject property the judgment was affirmed without petitioner being given a fair opportunity to present the reporter's transcript as evidence for why the judgment should be reversed.

On February 20, 2009 at oral arguments on appeal petitioner requested an opportunity to file a motion to augment the record on appeal with the reporter's transcripts, and respondent's Appellant Division denied petitioner's request and affirmed the judgment.

On March 9, 2009 petitioner filed a Petition for Rehearing with respondent's Appellant Division and supplied respondent Appellant Division with undisputed evidence that Thomas Hogan, Gary L. Link, Mark McGee, Thomas McGee, officials of the State of California and other persons had conspired to obstruct the administration of justice in the appellate action and thereby prevented petitioner from timely depositing the fees for the reporter's transcripts or from making other arrangement.

Neither Thomas Hogan nor the real party in interest disputed any of the evidence petitioner supplied respondent court's Appellate Division in support of his Petition for Rehearing.

The District Attorney of Sacramento County had actual knowledge that Thomas M. Hogan and Gary L. Link were conspiring with state officials to violate the real party in interests and her families civil rights pertaining to the property at issue in the petition, but have failed and neglected to prevent more wrongs from being committed because the real party in interest is African American and it is the policy of the State of California to discriminate against African Americans in the enforcement of laws.

The Petition for Rehearing was denied on March 18, 2008. *App. 3.*

On June 2, 2009 petitioner filed a Writ of Mandate or Prohibition and Request for Judicial Notice in the California Court of Appeal Third Appellate District. On June 4, 2009 the Court of Appeal denied the Petition for Writ of Mandate or Prohibition and petitioner's Request for Judicial Notice.

On July 2, 2009 petitioner filed a Petition of Review of the California Court of Appeal Third Appellate District order denying his petition for Writ of Mandate or Prohibition and Request for Judicial Notice in the Supreme Court of California. On August 19, 2009 the Supreme Court of California denied petitioner's Petition for Review.

Petitioner now requests this Court to review the Supreme Court of California's decision denying petitioner's Petition for Review of the order of the California Court of Appeal Third Appellate District denying petitioner's Petition for Writ of Mandate or Prohibition and Request for Judicial Notice.

REASONS FOR GRANTING THE PETITION THE CALIFORNIA SUPREME COURT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

Federal Question Presented

On August 25, 2008 petitioner filed a Notice of Motion and Motion for Summary Judgment and Summary Adjudication, a Separate Statement of Undisputed Facts and Declarations in respondent court's Unlawful Detainer Division which raised the federal question that, the unlawful detainer action was filed in furtherance of officials of the State of California and Thomas Hogan's conspiracy to harass, intimidate, and threaten defendants for the purpose of punishing them for exercising and asserting their rights secured by Title 42 U.S.C. §§ 1981, 1982 and 2000. App. 35.

On March 9, 2009 petitioner filed a Petition for Rehearing in respondent Appellant Division setting forth evidence and raising the issue that, this action has its origins in the County of Sacramento's , Thomas Hogan's, and other persons racially motivated conspiracy to deter, by force, intimidation, and threats appellants who were parties and witnesses in the United States District Court and the Superior Court of California from attending said courts and testifying to matters pertaining therein, freely, fully and truthfully, and to injure appellants in their persons and property on account of having so attended and

testified. In furtherance of the above-mentioned conspiracy Thomas Hogan, Gary Link, and Mark McGee used fraud, perjury, trickery, and deceit to file and prosecute this action on behalf of Sora McGee, Trustee of the Richard C. and Sora L. McGee Family Trust. App. 11, 57 & 66.

On June 2, 2009 petitioner filed a Petition for Writ of Mandate or Prohibition and an accompanying Request for Judicial Notice in the Court of Appeal of the State of California Third Appellate District with evidence supporting his claim that the underlying unlawful detainer action arises from official of the State of California, Thomas Hogan and other persons participation in a vast racially motivated conspiracy to violate petitioner's and other persons rights secured by Title 42 U.S.C. §§ 1981, 1982 and 2000 and the State of California's policy of discriminating against petitioner and other African Americans on the grounds of race in law enforcement programs and activities. Petitioner requested the Court take judicial notice of the judgment, order, findings and recommendations, and statement of undisputed facts in the cases entitled *McGee Et. Al. v. Seagraves Et. Al.* U.S. District Court Eastern District of California 06-CV-00495 MCE GGH and *McGee v. CA State Senate Et. Al. Supra* for the proposition that Gary L. Link and Thomas M. Hogan used fraud and perjury to obtain the underlying judgment in furtherance of a vast racially motivated conspiracy to violate petitioner's civil rights. Petitioner also requested the Court to take judicial notice of all papers, records, and briefs filed in said court in the matter *In re: JEFFERSON ARNOLD McGEE on Habeas Corpus* No. C060841, for the proposition that the Attorney General of the State of California, the County of Sacramento, the District Attorney of Sacramento County

and others attorneys are using the Superior Court of California as an instrument to punish petitioner for exercising and asserting his civil rights. App. 2.

On July 2, 2008 petitioner filed a Petition for Review in the Supreme Court of California which presented the question of whether based on the facts set forth in the Writ of Mandate or Prohibition and the accompanying Request for Judicial Notice and pursuant to Title 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986, and 2000 and California Civil Code §§ 51 and 52, the State of California is liable to petitioner and other persons for civil damages, and may be prevented from receiving federal financial assistance if the September 3, 2008 judgment of the Superior Court of Sacramento County in the case entitled *McGee v. McGee et. al.* No. 07UD05837 is allowed to stand. App. 1.

SUMMARY OF ARGUMENT

A. Overview

Obviously, the Supreme Court of California's decision in this case will have a profound troubling impact on the People of the United States because allowing the State of California to continue to discriminate against African Americans on the grounds of their race and color in law enforcement programs and activities and allowing the Governor of California, the Legislature of California and other persons to display an open contempt for the Constitution and Laws of the United States by continuing to participate in a vast racially motivated conspiracy to

violate African Americans' constitutional rights will incite other states and other executive branches and legislative branches to do the same. The filing of the underlying unlawful detainer action was incited by the State of California's discrimination against African Americans, and prosecuted in furtherance of the governor and his co-conspirators vast racially motivated conspiracy to violate the civil rights of African Americans. The facts set forth in the Petition for Writ of Mandate or Prohibition also demonstrated the underlying judgment was obtained through the use of fraud, perjury, and trickery. The evidence presented with the petition further demonstrated that the governor and his co-conspirator's unlawful conduct as set forth in this petition is malicious, reckless, callous, and done with deliberate indifference to petitioner's federally constituted rights and with contempt for the Constitution and Laws of the United States. *McGee v. CA State Senate Et. Al.* 2007 US Dist. Court LEXIS 94250.

The judgment if allowed to be enforced would sanction the malicious, reckless, and callous unconstitutional and criminal conduct of the governor of California and the other co-conspirators, and incite more contempt for the Laws of the United States. If the officials of the State of California are allowed to go unpunished for their criminal actions as set forth in this petition and continue to hold public office in California then it will be only a matter of time before theses criminals will to be elected or appointed to positions in the federal government and further promulgate their contempt for the Constitution and Laws of the United States and their practice of discriminating against African Americans on the grounds of their race and color.

B. Why Review Is Warranted

Review is warranted because if California is receiving federal financial assistance for her law enforcement programs and activities and is discriminating against African Americans on the grounds of race in law enforcement programs and activities then the States of California is unlawfully using federal funds to discriminate against African Americans. Title VI of the Civil Rights Act of 1964 is set forth in 42 U.S.C. § 2000d et. seq. and applies to federally assisted programs in general. **No person** in the United States shall, on the ground of race, color, or national origin be exclude from participation in, denied the benefits of, or subjected to discrimination under any program or activities receiving federal financial assistance. *Hill v. Gauteavy* 1976) 425 US 284. An individual discriminated against in violation of Title VI of the Civil Rights Act of 1964 by a state has a private right of action against the state. (*See Guardians Ass'n. v. Civil Ser. Comm'n NYC (1983) 463 US 582, 593-595.) University of California Regents v. Bakke* (1978) 438 US 265, 283-284.

Petitioner and his family have been injured by the State of California's race discrimination as described in this petition and are entitled to a remedy for their injury. The questions of whether the State of California is immune under the Eleventh Amendment for damages and costs incurred by petitioner and his family as a direct result of the State of California discriminating against African Americans in law enforcement programs and activities, or whether the State of California is immune under the Eleventh Amendment for costs incurred by petitioner as a direct result of a vast racially motivated conspiracy to violate the civil rights of African Americans, should be

answered here in the "interest in sound judicial administration and particularly the judicial abhorrence of piecemeal appeals and equities." Petitioner and his family have been injured in their person and property by the State of California's racial discrimination and will go to the United States District Court for their remedy. This Court's attention to this question during these proceedings will prevent the court of appeal from having to examine this same issue again.

Review is also needed because this petition presents important and recurring issues, resolution of which is vital to the People of the United States as well as the governments of the several states of the United States. Problems with state sponsored race discrimination, and state officials participating in racially motivated conspiracies to violate civil rights of African Americans are problems that have arisen across the country and across time (including California) and has caused unnecessary hardship in the African American community. Clarification that the United States take civil rights very seriously and will act to prevent states from further violating the civil rights of her citizens is essential for the governor, the legislature, and the People of the State of California to understand. Also, it is important that attorneys involved in the day-to-day practice of law in this Court and other courts in the United States understand that aiding their clients in a conspiracy to violate the civil rights of African Americans will not be tolerated.

Moreover, the need to prevent attorney's from aiding their clients in violating the Constitution and Laws of the United States while prosecuting or defending actions in the

federal and state courts is particularly important to the People of the United States, because the People of the United States rely on attorneys to advise the public on what is lawful and what is unlawful. The Courts of the United States rely on attorneys to be law abiding and ethical when participating with Judges and Clerks in the administration of justice. When attorneys who have been admitted to practice law in the Courts of the United States aid their clients in violating the Constitution and Laws of the United States it erodes the confidence people have in the court system incites other attorneys to engage in the same practices. The conspiracy set forth in the petition could have been prevented if a few of the attorneys practicing law in the United States District Court in the matters of *McGee et. al. v. Seagraves Et. Al.* and *McGee v. Cal. State Senate et. al. supra* would have had respect for the Constitution and Laws of the United States and the State of California and refused to represent persons engaged in criminal activities.

Indeed, attorneys are frequently called for advice by a state agencies, local governments, or private citizens for counsel on how to handle cases involving the violation of civil rights, as in the cases of *McGee v. California State Senate et. al.* and *McGee et. al. v. Seagraves et. al. supra.* In the above-mentioned cases several attorneys including Attorney General of California, the Department of Justice of California, the California Office of Legislative Counsel, the Sacramento County District Attorney's Office, the Sacramento City Attorney's Office were called upon to counsel the state agencies, local governments, and private persons on matters pertaining to civil rights, instead of counseling the state agencies, local governments and other

persons to stop violating civil rights, these attorneys collected fees from state officials and private persons in return for their aid in covering up hate crimes.[4]

Also, the Attorney Generals of the State of California have engaged in a vast racially motivated conspiracy to violate petitioners and other persons civil rights. The former Attorney General of California Daniel Lungren and William Lockyear, have used public monies to defend state officials in federal civil rights actions while having actual knowledge that the state officials they were defending had admitted to violating petitioner's civil rights, and admitted to committing crimes against petitioner and others.[5] *App. 57 & 66.* Neither this Court nor the People of the State of California can have any confidence in the office of the California Attorney General to represent the People of the State of California in criminal or civil actions, because over the past ten years the California Attorney Generals have willfully violated the civil rights of African Americans in the State of California. It is important to the People of the United States for this Court to instill in attorneys a respect for the laws and Courts of the United States.

In the matter of *the People of the State of California v. Jefferson Arnold McGee* No. 03F11189 filed in respondent court. The Attorney General of California, the District Attorney of Sacramento County, and the Sacramento County Public Defender's office displayed open contempt for the Constitution and Laws of the United States during the

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[4] The Attorney General of California, the Department of Justice of the State of California, and other attorneys involved in the cases listed above are probably admitted to arguing law before this Court.

[5] Daniel Lungren is a member of the United States House of Representatives.

proceedings. In the above-mentioned action the sheriff of Sacramento County Lou Blanas, the District Attorney of Sacramento County Jan Scully while acting under the direct supervision of the Attorney General of California William Lockyear committed robbery and burglary at petitioner's residence, kidnapped petitioner, and charged petitioner with two violent felonies solely because petitioner is African American and stopped two European Americans from trespassing at his residence, stealing his property and assaulting his family.[6] Jan Scully initiated and prosecuted the criminal proceedings against petitioner although she and petitioner had been embroiled in civil rights litigation for approximately six years. During the above-mentioned criminal proceedings respondent Court appointed the Sacramento County Public Defender's office to represent petitioner in the criminal action, but the Sacramento County Public Defender's office refused to file any motions to dismiss or motions to recuse the entire District Attorney's office from prosecuting the action even though it was clear that the criminal complaint was filed unsigned and petitioner and Jan Scully had been embroiled in civil rights litigation for approximately six years. Petitioner plead no contest to a lesser charge and appealed the criminal conviction to the California Court of Appeal for the Third Appellate District the case is entitled *The People v. McGee* No. C049881.

The Court of Appeal appointed petitioner an attorney to represent him on appeal. During the appellate procedure petitioner's court appointed appellate counsel failed to act as an active advocate while prosecuting petitioner's appeal

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[6] California Government Code §12550.

and therefore denied petitioner his rights to substantial equality and fair process under the Sixth and Fourteenth Amendments of the United States Constitution. The judgment was affirmed.

Petitioner had rights secured by Title 42 USC §§ 1981, 1982, and 2000 California Law to not even be prosecuted for protecting his property and family. Petitioner also had a right secured by the Fourteenth Amendment not to be subject to a trial in a criminal proceeding by a prosecutor whom he was embroiled in civil litigation and had the right to effective assistance of counsel in the criminal action in the matter of *People v. McGee Supra*. Petitioner further had a Sixth Amendment right to have an active advocate on his appeal of the criminal action. The actions of the attorneys set forth above displayed an open contempt for the Constitution and Laws of the United States and the State of California. See *Georgia v. Rachel*, (1965) 384 US 780, *People v. Miller* 72 CA 607, Tumy *v. Ohio* (1926) 273 US 522, *Anders v. California* (1967) 386 US 738. Based on the conduct of these attorneys as set forth above neither this Court nor any other court could have confidence in any death sentence the above mentioned attorneys were involved in. App 57 and *McGee v. CA State Senate Supra*.

In this action attorneys Gary L. Link and Thomas M. Hogan in furtherance of a vast racially motivated conspiracy to violate the civil rights of African Americans, worked in concert with Mark McGee, Thomas McGee and others to deceive the real party in interest into continuing to prosecute the underlying unlawful detainer action while having actual knowledge that the complaint was filed through the use of fraud and perjury, and that the

complaint could not in good faith be amended to state a cause of action for unlawful detainer. Thomas Hogan Attorney at Law, also prepared a sham amended complaint and induced petitioner's seventy-nine year old mother (the real party in interest) to subscribe and verify the amended complaint. It is precisely theses practices and criminal activities that incite other attorneys to show contempt for the Constitution and Laws of the United States.

The evidence in this action demonstrates, attorneys, including the Attorney General of the State of California, have and continue to display open contempt for the Constitution and Laws of the United States. Based on the conduct and character of the attorneys as described above it is difficult if not impossible for this Court or any other tribunal, or the People of the United States to have confidence that these attorneys will abide by the law when presenting cases before this Court or any other court. The outcome of any action argued by Daniel Lungren, William Lockyear, Jan Scully, Thomas Hogan, Gary Link, and other attorneys that have participated in the conspiracy set forth in this petition are all tainted. The resulting harm to public confidence in government of the United States have been irreparably damaged by the conduct of these attorneys. The attorneys' actions set forth in this petition if allowed to continue will discourage African Americans and other persons from using the courts to resolve their legal disputes, or believing that they will be treated fairly in our legal system.

ARGUMENT

REVIEW SHOULD BE GRANTED TO PREVENT THE STATE OF CALIFORNIA FROM EVICTING PETITIONER AND HIS FAMILY FROM THE PROPERTY KNOWN AS 5617 BONNIEMAE WAY SACRAMENTO, CALIFORNIA 95824 ON THE GROUNDS OF THEIR RACE AND COLOR IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES

LEGAL DISCUSSION

A. REVIEW SHOULD BE GRANTED BECAUSE THE FILING AND PROSECUTION OF THE UNLAWFUL DETAINER ACTION ENTITLED *McGEE V. McGEE ET. AL.* NO. 07UD05837 IN THE SUPERIOR COURT COUNTY OF SACRAMENTO WAS FRIVOLOUS, AND MERITLESS, A STATE ACTION, AND IS FORBIDDEN BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND TITLE 42 U.S.C. §§ 1981, 1982 AND 2000.

Review should be granted because the filing and prosecution of the unlawful detainer action entitled *McGee v. McGee Et. Al.*, No. 07UD05837 was frivolous, meritless, a state action, and forbidden by the Fourteenth Amendment to the United States Constitution. On September 2, 2008 during a hearing on petitioner's Motion for Summary Judgment, Thomas Hogan and the real party in interest admitted that the filing of the amended complaint on August 6, 2008 was frivolous, meritless, and done in bad faith. *App 33 & 35.* The facts set forth in the petition and accompanying papers demonstrated this action arose from the State of California's policy of discriminating against

African Americans on the grounds of race in law enforcement programs and activities and officials of the State of California, municipalities of the State of California, Thomas Hogan and other persons participating in a vast racially motivated conspiracy to violate petitioner and other persons rights secured by Title 42 U.S.C. §§ 1981, 1982, and 2000. The facts further demonstrate that in furtherance of the above-mentioned conspiracy attorneys Gary L. Link and Thomas M. Hogan used fraud and perjury to obtain the judgment at issue in this petition, and then conspired with the Sheriff of Sacramento County to obstruct the administration of justice in respondent court's Appellate Division to prevent the judgment from being overturned on appeal. *App. 11.*

Based on the facts set forth in the petition, it is clear that the criminal actions taken to acquire the judgment in the underlying unlawful detainer action were state actions which implemented and executed a policy adopted and promulgated by the governor, attorney general and the legislature of the State of California, and were done in furtherance of the conspiracy set forth in the petition. *App.* 57. When private individuals act jointly with state officials in performing a prohibited action, the conduct is deemed state action and under color of law. *Monroe v. Pape* (1961) 365 U.S. 167, 173-174, *Burton v. Wilmington Park Authority* (1961) 365 U.S. 715, 723-725, *Adickes v. S.H. Kress & Co.* 398 U.S. 144 and *Lugar v. Edmondson Oil Co.* (1982) 457 U.S. 922, 941-942. Therefore the filing and prosecution of the case entitled *McGee v. McGee Et. Al., supra* in respondent court was a state action, since the evidence shows Thomas M. Hogan and other persons acted jointly with state officials in punishing petitioner and his

family for exercising and asserting their federal constitutional rights when they filed and prosecuted the frivolous and meritless unlawful detainer action. Further, since the action was filed without probable cause and for the purpose of harassing and maliciously injuring petitioner and his family to punish them for exercising and asserting their rights secured by Title 42 USC §§ 1981, 1982, and 2000 the mere existence of the underlying unlawful detainer action is forbidden by the Fourteenth Amendment to the United States Constitution.

B. THE STATE OF CALIFORNIA'S ATTEMPT TO EVICT PETITIONER AND HIS FAMILY FROM THE PROPERTY KNOWN AS 5617 BONNIEMAE WAY SACRAMENTO, CALIFORNIA 95824 ON THE GROUND OF THEIR RACE AND COLOR REPRESENTS AN UNREASONABLE EXERTION OF POWER WHICH IS NOT WITHIN THE LAWFUL POWER OF THE STATE OF CALIFORNIA AND THEREFORE VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Review should also be granted because the State of California's attempt to evict petitioner and his family from the property known as 5617 Bonniemae Way Sacramento, California 95824 on the grounds of their race represents an unreasonable exertion of power which is not really within the lawful power of the State of California and therefore violates the equal protection and due process clause of the Fourteenth Amendment to the United States Constitution. The judgment entered in the unlawful detainer action was

entered contrary to: settled constitutional law; federal statutes; state statutes; and settled decisional law of the State of California. California Code of Civil Procedure §1161 and the decisions of the Supreme Court of California and California's Court of Appeal has expressly directed that the existence of a landlord-tenant relationship is a condition precedent to an unlawful detainer action and must be stated in the complaint, and that every pleading be subscribed by the party or his or her attorney, and there has been no exception made to those laws. *Francis v. West Virginia Oil Co.* (1917) 174 C 168, 162, 394 and *Klein v. Loefler* (1929) 274 P. 373, 96 Cal App 338. *California Code of Civil Procedure* §§ 446 and 1166 require the plaintiff subscribe and verify the complaint. In this action the complaint did not state the existence of a landlord-tenant relationship. *App 50 & 53.* Based on the plaintiff's failure to subscribe and verify the complaint and the facts alleged in the complaint the amended complaint was necessarily a sham pleading because it was not based on the same operative facts alleged in the complaint. *Barrington v. A.H. Robin Co.* (1985) 39 C 3d 146, 216 CR 405.

Furthermore, based on the cases cited above respondent court did not have jurisdiction to deny petitioners motion for summary judgment because the facts set forth in the entire record: (1) conclusively negated one or more elements of the unlawful detainer action; and (2) on the face of the complaint it was evident that the real party in interest did not possess and could not reasonably obtain evidence to support any claim for relief under the unlawful detainer statutes. *Aguilar v. Atlantic Richfield Co.* (2001) 25 4th 826, 849. Also, according to Cal. Govt. Code § 68081 and Adoption of Alexander S. 44 Cal. 857, 245 Cal. Rptr. 1,

750 p. 778 (March 1988) petitioner was entitled to a rehearing of the appellant action.

As set forth above the entering of the judgment was an arbitrary exertion of power by the State of California and not within its lawful power of the State of California because Title 42 U.S.C. §§ 1981, 1982 and 2000 and Cal. Civil Code § 51.7 prohibits the State of California and other persons from evicting persons from real property on the grounds of race and color. Also, the entry of the judgment was a departure from settled statutory and decisional law of the State of California. Review should be granted because the judgment in the underlying unlawful detainer action represents an unreasonable exertion of power which was not within lawful power of the State of California and therefore violates the due process clause of the Fourteenth Amendment of the United States Constitution. See *American Land Co. v. Zeiss* (1911) 219 US 47, *Tracy v. Ginzberg* (1907) 205 US 170, and *P. R. Co. v. Macky* (1888) 127 US 205.

C. REVIEW SHOULD FURTHER BE GRANTED BECAUSE IT IS IMPORTANT TO THE PUBLIC POLICY OF THE UNITED STATES FOR THIS COURT TO DEFINITELY HALT THE LONG STANDING AND RECURRING PROBLEMS OF THE GOVERNORS, THE ATTORNEY GENERALS, THE LEGISLATURES, AND THE MUNICIPALITIES OF THE STATE OF CALIFORNIA DISPLAYING AN OPEN CONTEMPT FOR THE CONSTITUTION AND LAWS OF THE UNITED STATES.

Review should further be granted because it is important to the public policy of the United States for this Court to definitely halt the longstanding and recurring problems of Governors, Attorney Generals, Legislatures, and the municipalities of State of California in displaying open contempt for the Constitution and Laws of the United States. There is no dispute that the State of California maintains by customs, usages, and practices a policy of discrimination against African Americans on the grounds of race in law enforcement programs and activities. *McGee v. CA State Senate Et. Al. Supra.* There is also no dispute that the Governor, the Attorney General, the Legislature, municipalities of the State of California and other persons while acting under the color of law of the State of California participated in and continue to participate in a vast racially motivated conspiracy to violate African Americans' civil rights and that petitioner and his family were injured in their person and property as a result of said conspiracy. *McGee et. al. v. Seagraves, et. al., App 57 & 66.* Title 42 U.S.C. §§ 2000d prohibits discrimination under any program or activity receiving federal financial assistance and provides a private right of action against a state for such discrimination. See *Guardian Assn. v. Civil Serv. Comm'n. NYC* (1983) 463 U.S. 582, 593-595. Title 18 U.S.C. §§ 241, 242, 245, and 1512 makes it a federal offence punishable by imprisonment to conspire under color of the law of any state to injure, oppress, threaten, or intimidate any person in the free exercise or enjoyment of their rights secured by Title 42 USC §§ 1981, 1982 and 2000.

California Civil Code §§ 51.7 provides that "[a]ll persons in the State of California have a right to be free from any violence, or intimidation by threats of violence,

committed against their person or property because of their race..." California Gov. Code §§ 11135-11139.5 prohibits race discrimination under programs and activities funded directly by the State of California.

The fact that the United States and the State of California have laws that prohibit, the State of California from discriminating against African Americans' on the grounds of race in law enforcement programs and activities, and the United States and the State of California have laws that prohibit state officials from participating in a vast racially motivated conspiracy to violate African Americans' civil rights indicates the action of officials of the State of California as set forth in the petition are against public policy, and displays an open contempt for the Constitution and Laws of the United States and the State of California, and must be halted by this Court as a matter of law.

In this action the State of California is attempting to unlawfully evict petitioner and his family from the property known as 5617 Bonniemae Way Sacramento, California 95824 on the grounds of their race and color in violation of the Constitution and Laws of both the United States and the State of California.[7] Review should be granted because it is in the interest of every citizen of the United States for this Court to assure them that the United States is a country ruled by the Constitution and Laws of the United States and not by a gang of criminals who have hijacked a

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[7] Within the past ten years, the State of California has evicted petitioner from the following properties on the grounds of his race and color: 9412 Elk Grove Florin Road Elk Grove, California 95624; 8553 Iris Crest Way Elk Grove, California 95624; and 7917 Bruceville Road Sacramento, California 95823 and deprived petition and his family of hundreds of thousands of dollars in property and lost income. See facts in this Court's case *McGee v. Hildebrand* 01-8439)

state government, and have the potential to infiltrate the federal government. If the underlying judgment is allowed to be enforced then the Constitution of the United States and federal civil rights statutes will have failed to protect citizens of the United States.

This Court's attention to this matter is important because officials of the State of California are displaying an open contempt for the Courts of the United States and the State of California. Attorneys are using perjury, fraud, and criminal conduct in the courts of the United States and State of California to violate the civil rights of citizens of the United States. It is important to the public policy of the United States for this Court to express to the People of California, and the people of the other forty-nine states, that the United States take civil rights very seriously.

CONCLUSION

The judgment below is a departure from this Court's constitutional rulings and civil rights rulings. If allowed to be enforced would sanction the criminal behavior of officials of the State of California and some of her citizens, and incite other states, municipalities, and persons to display open contempt for the Constitution and Laws of the United States.

Dated: November 17, 2009

Respectfully Submitted,

Jefferson A. McGee
Attorney Pro Se/Pro Per

Court of Appeal, Third Appellate District – No. C062003

S174388

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JEFFERSON A. MCGEE, Petitioner

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent;

SORA L. MCGEE, Real Party in Interest

The petition for review is denied.

SUPREME COURT
FILED
AUG 19 2009
Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

In The

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

JEFFERSON A. MCGEE,

Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent,

SORA L. MCGEE,

Real Party in Interest,

FILED

JUN – 4· 2009

Court of Appeal-Third District

By Deena A. Fawcett

Deputy

C062003

Sacramento County No. 07UD052837

BY THE COURT:

The request for judicial notice is denied for failure to demonstrate the relevancy of the material. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301.)

The petition for writ of mandate or prohibition is denied.

Dated: June 4, 2009

SCOTLAND, P.J.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
APPELLATE DIVISION

SORA MCGEE

PLAINTIFF/RESPONDENT

V.

JEFFERSON MCGEE,

DEFENDANT/APPELLANT

Appellate Div. No.: 07UD05837

Superior Court No.: 07UD05837

Nature of Proceedings: APPEAL FROM THE SUPERIOR COURT

The Court has received, read, and considered appellant's Petition for Rehearing filed March 9, 2009. The Court now rules as follows:

Appellants; March 9, 2009 petition for rehearing is denied.

Judge: MARYANNE G. GILLIARD – PRESIDING

No. _____

Superior Court of California

County of Sacramento

Appellate Division

February 20, 2009

Judge: Maryanne G. Gilliard - Presiding

Dept. No. : 12A

SORA MCGEE

Plaintiff/Respondent

Vs. Appellate Division No.: 07UD05837

Superior Court No.: 07UD05837

JEFFERSON MCGEE, ET. AL.

Defendant/Appellant

Nature of Proceedings: APPEAL FROM THE SUPERIOR COURT

The above entitled cause came on for oral argument on FEBRUARY 20, 2009. The matter was argued to the Court and taken under submission.

At oral argument, appellants requested an opportunity to file a motion to augment the record on appeal with reporter's transcripts. The request is denied

because it is untimely. In addition, the court notes that on October 23, 2008, it informed appellants that they had not deposited the fees for the reporter's transcripts. The October 23, 2008 order also informed appellants that if the fees were not timely deposited, the record would be prepared without the reporter's transcripts. Appellants failed to timely deposit the fees and the record was prepared without the reporters transcripts. Appellants did not provide any good cause for failing to timely deposit the fees.

The judgment is affirmed.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME: SEPTEMBER 19, 2008

JUDGE: MICHAEL P. KENNY

DEPT. NO. : 31

JEFFERSON A. McGEE and JULIA A. McGEE

Petitioners,

Vs. Case No.: 34-2008-80000050-CU-WM-GDS

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

Respondent,

SORA L. McGEE

Real Party In Interest,

Nature of Proceedings: COURT ORDER

The Court had reviewed the Petition for a Writ of Mandate or Supersedeas or Prohibition filed by Jefferson McGee and Julia McGee. Other then labeling their filing with such a title, petitioners have not provided any other notice or points and authorities identifying the relief being requested. Instead, petitioners have simply attached as exhibits the prior pleadings filed in the case as well as the

order denying summary judgment. The Petition for Writ of Mandate or Supersedeas or Prohibition is deemed a Motion for Reconsideration of the order denying summary judgment. As such relief is not in the nature of a writ, this matter is consolidated for consideration of the relief under CCP 473 as construed by this Court.

The Court on its own motion orders the following cases consolidated for all purposes: JEFFERSON A. MCGEE AND JULIA A. MCGEE vs. SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, Case Number 34-2008-80000050-CU-WM-GDS and SORA MCGEE TRUSTEE vs. JEFFERSON MCGEE AND JULIA MCGEE Case Number 07UD05837. The Court designates Case Number 07UD05837as the lead case and all further documents filed under the case number and caption of the lead case.

Superior Court of California, County of Sacramento
Unlawful Detainer Division
301 Bicentennial Circle
Sacramento, CA 95826-2701 – (916) 875-7746

SORA MCGEE vs. JEFFERSON MCGEE Et. Al.,

JUDGMENT AND NOTICE OF ENTRY OF JUDGMENT

Julia McGee
5617 Bonniemae Way
Sacrametno, CA 95824

This matter came on regularly for Court Trial on September 03, 2008 at 10:00 am, in Department 88 before the Honorable COMMISSIONER ANA BRAVO, TEMPORARY JUDGE, presiding.

Marcu McGee, authorized agent for the Plaitniff SORA MCGEE, was present with Attorney THOMAS M. HOGAN. Defendants JEFFERSON MCGEE and JULIA MCGEE appeared in pro per.

The Court having received evidnce of the giving of timely ntice of trial, and a jury tiral having been duly waived, the Court having heard the testimony and considered the evidence, both oral and documentary, and a

statement of decision not having been requested, and good cause appearing therefore, now orders judgment as follows:

It is ORDERED, ADJUDGED, and DECREED that:

Plaintiff SORA MCGEE is entitled to possession and a writ shall issue for the premises described as: 5617 BONNIEMAE WAY, SACRAMENTO , CA 95824. The rental agreement is canceled.

Judgment applies to all occupants of the premises including tenants, subtenants, if any, and named claimants, if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

Defendants JEFFERSON MCGEE and JULIA MCGEE shall pay plaintiff principal in the amount of $9,501.60 attorney's fees $(0.00), costs $(reserved).

Date: September 03, 2008

Commissioner Ana Bravo, Temporary Judge

Superior Court of California, County of Sacramento

Unlawful Detainer Division

Superior Court of California, County of Sacramento
Unlawful Detainer Division
301 Bicentennial Circle
Sacramento, CA 95826-2701 – (916) 875-7746

SORA MCGEE vs. JEFFERSON MCGEE Et. Al.,

ORDER REGARDING MOTION FOR SUMMARY JUDGMENT

COURT COPY

This matter came on regularly for hearing on September 02, 2008, at 8:00 AM, in Department 88 before the Honorable COMMISSIONER RUSS DETRICK, TEMPORARY JUDGE, presiding.

Attorney THOMAS M. HOGAN representing Plaintiff Sora McGee was present, Defendants JEFFERSON MCGEE and JULIA MCGEE appeared in pro per.

The motion for summary judgment requested by Defendant JEFFERSON MCGEE was heard.

IT IS HEREBY ORDERED that the Motion be DENIED.

Date: September 02, 2008

Commissioner Russ Detrick, Temporary Judge
Superior Court of California, County of Sacramento
Unlawful Detainer Division

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(916) 247-2413

Julia A. McGee, Attorney Pro Per
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(916) 476-6505

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO, APPELLATE DIVISION

(Limited Civil Case)

SORA McGEE,	APPELLATE DIVISION
Plaintiff and Appelle	#07UD05837
	SUPERIOR COURT
V.	#34-2008-80000050-CU-WM-GDS

JEFFERSON A. McGEE, ET. AL.,

UNLAWFUL DETAINER DIVISION

Defendant and Appellant,

_____)

PETITION FOR REHEARING

TRIAL JUDGE: HON. ANA BRAVO

THIS IS AN UNFAIR BUSINESS COMPETITION CASE, THIS BRIEF IS BEING FILED PURSUANT TO BUSINESS AND PROFESSIONS CODE §§ 17200 ET. SEQ.

APPELLANT'S PETITION FOR REHEARING

TO THE HONORABLE JUDGES OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

INTRODUCTION

Petitioners are the appellants in the above-entitled case, which was heard on February 20, 2009, and was decided on February 20, 2009, in favor of appellee by affirmation of the judgment of the trial court.

Pursuant to California Rules of Court, Rule 8.708, petitioner and appellant request that the decision and judgment be vacated and a rehearing to prevent a miscarriage of justice.

Petitioners' grounds are as follows:

REASONS WHY REHEARING SHOULD BE GRANTED

I. **The reviewing court based its decision on an issue not proposed or briefed by parties, specifically appellant was not afforded the opportunity to show why good cause existed for failing to timely deposit the fees for the reporter's transcripts.**

STATEMENT OF CASE

Background

The present action has its origins in the County of Sacramento's, Thomas Hogan's, and other persons racially motivated conspiracy to deter, by force, intimidation, and threats appellants who were parties and witnesses in the United States District Court and the Superior Court of California from attending said courts and from testifying to matters pertaining therein, freely, fully, and truthfully, and to injure appellants in their persons and property on account of having so attended and testified. In furtherance of the above-mentioned conspiracy Thomas Hogan, Gary Link, and Mark McGee used fraud, perjury, trickery, and deceit to file and prosecute this action on behalf of Sora McGee, Trustee of the Richard C. and Sora L. McGee Family Trust. During these proceedings on October 23, 2008 the County of Sacramento Sheriff Department, Mark McGee, Thomas McGee, and other persons obstructed the

administration of justice in these proceedings by unlawfully seizing the property at issue in underlying unlawful detainer action under color of authority of this Court. As a direct result of the unlawful seizure of the property at issue in this action appellant failed to timely deposit the fees for the reporters transcript or make other arrangements and the record was prepared without the reporters transcript. (*See attached declarations of Jefferson McGee and Julia McGee.*)

Procedural History

On September 9, 2008 appellants initiated this action by filing a Notice of Appeal. Latter on September 17, 2008 plaintiff filed Notices of designation of the clerk's transcript and reporter's transcript pursuant to California Rules of Court, Rule 8.120 et. seq. On October 23, 2008 this Court informed appellants that if the fees were not timely deposited the record would be prepared without the reporter transcripts. As set forth below, appellants for good cause failed to timely deposit the fees and the record was prepared without the reporter's transcript. On February 20, 2009 appellants requested an opportunity to file a motion to augment the record on appeal with the reporter's transcripts. The Court denied the request because the Court found the request was untimely and appellants did not provide any good cause for failing to timely deposit the

fees. Now appellants pursuant to Cal. Gov. Code § 68081 are requesting a rehearing to afford them the opportunity to brief this Court on why good cause exists to allow appellant the opportunity to file a motion to augment the record with reporters transcripts.

STATEMENT OF FACTS

Because the Superior Court County of Sacramento Appellant Division rendered a decision based upon the fact that appellant did not provide any good cause for failing to deposit the fees, the issue is whether appellants were afforded the opportunity to present good cause for failing to deposit the fees through supplemental briefing. The facts set forth below demonstrate appellants good cause for failing to timely deposit the fees.

Facts

i. On July 2, 2009 Thomas Hogan, Gary Link, Mark McGee, Thomas McGee, the Sacramento County Sheriff Department began to work in concert to deter, by force, intimidation, and threats appellants who were parties and witnesses in the Superior Court County of Sacramento case No. 34-2008-80000050-CU-WM-GDS, 07UD05837, and 06AS05145 from attending said

court and from testifying to matters pertaining therein, freely, fully, and truthfully and to injure appellants in their persons and property on account of having so attended and testified. (RT)

ii. On October 23, 2008 this Court issued an order informing appellants that they had not deposited the fees for the reporter's transcripts. The Court's October 23, 2008 order also informed appellants that if the fees were not timely deposited, the record would be prepared without the reporters transcripts. (*See record of this action.*)

iii. Also on October 23, 2008 appellants were in actual possession and entitled to peaceable possession of the property at issue in this action (5617 Bonniemae Way Sacramento, California 95824) and were using the property as appellants residence. At approximately 10:00 a.m. on that date the Sacramento County Sheriff Department, Mark McGee,

Thomas McGee, two Sacramento County Sheriff deputies and other persons forcibly entered the property by fraud, forgery, deceit, trickery, threats of violence, and threats of arrest. The above-mentioned parties took possession of the property at issue in this action without legal standing to do so and without a valid judgment issued by a court. (*See attached declarations of Jefferson McGee and Julia McGee.*)

iv. On October 23, 2008 the Sacramento County Sheriff's Department, Mark McGee, Thomas McGee, two Sacramento County Sheriff deputies unlawfully took possession of the property at issue in this action under the color of authority of this Court although none of the above-mentioned parties had legal standing to do so.

v. As a direct result of the Sacramento County Sheriff's Department, Mark McGee, Thomas McGee unlawfully

taking possession of the property at issue in this proceeding on October 23, 2008 appellant felt intimidation, and emotional distress and was unable to freely and fully perfect this appeal by timely depositing the court reporters fees or making other arrangements as required by the California Rules of Court.

vi. On February 20, 2009 appellants requested an opportunity to file a motion to augment the record on appeal with reporter's transcripts. Appellee did not object to appellant's request to file a motion to augment the record on appeal with reporter's transcripts.

vii. On February 20, 2009 this Court denied appellants request to file a motion to augment the record on appeal with reporter's transcripts without affording appellant an opportunity to present their views on the matter through supplemental briefing.

ISSUES

Whether appellants are entitled to an opportunity to present a supplemental brief demonstrating that good cause exists for failing to timely deposit fees for the reporter's transcripts or to make other arrangements.

STANDARD OF REVIEW

§6801. Appellant review; Supplemental briefing rehearing

> *"Before the Supreme Court, a court of appeal, or the appellant division of a Superior Court renders a decision in a proceeding other than a summary denial of a petition for extraordinary writ, based upon an issue which was not proposed or briefed by any party to the proceedings, the Court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the Court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party."*

SUMMARY OF ARGUMENT

The decision and judgment entered in this action should be vacated to prevent a miscarriage of justice. A review of the entire record in this action will reveal that: (1) this action was initiated and prosecuted by the use of fraud and perjury; (2) appellants were prevented from fully and freely prosecuting this appeal by the Sacramento County

Sheriff's Department, Mark McGee, Thomas McGee, and Thomas Hogan's unlawful conduct; (3) appellants have not been afforded the opportunity to brief the Court on their reasons for failing to timely deposit the fees for the reporter's transcript or to make other arrangements; and (4) the conduct of Thomas Hogan, Mark McGee, Thomas McGee, and the Sacramento County Sheriff's Department was done under the color of authority of this Court and prevented appellants from freely and fully prosecuting this appeal. Based on the facts set forth in this petition and Cal. Gov. Code § 68081 appellants are entitled to a rehearing to present their view on the matter through supplemental briefing. *Adoption of Alexanders* 44 Cal. 857, 245 Cal. Rptr. 1, 750 p. 778 [Mar. 1988]. If this Court's decision of February 20, 2009 is allowed to stand it would result in a miscarriage of justice.

ARGUMENT

Petitioner request for a rehearing should be granted because this Court rendered a decision in this action based upon an issue which was not proposed or briefed by the parties to these proceedings. If appellant had been afforded the opportunity to brief the issues appellant would have made the Court aware of the criminal activities which obstructed the administration of justice in this proceeding

and prevented appellant from freely and fully prosecuting this appeal. In the interest of justice this Court should vacate its judgment enter on February 20, 2009 and order a rehearing to prevent a miscarriage of justice.

CONCLUSION

For the foregoing reasons, these parties request that this Court grant a rehearing in the above-entitled matter.

Dated: March 9, 2009

Respectfully Submitted,

_____

Jefferson A. McGee, Attorney Pro Per

_____

Julia A. McGee, Attorney Pro Per

DECLARATION OF JEFFERSON A. McGEE SUPPORTING APPELLANTS REQUEST FOR REHEARING, AND REQUEST TO FILE A MOTION TO AUGMENT THE RECORD ON APPEAL WITH REPORTER'S TRANSCRIPTS.

I, Jefferson A. McGee, declare as follows:

1. I am an attorney pro per in the above-entitled action. I have personal knowledge of the matters contained in this declaration, and if called as a witness to testify, I could and would competently testify to them.
2. On September 3, 2008, the Superior Court, County of Sacramento Unlawful Detainer Division filed a judgment in the above-entitled case.
3. On September 9, 2008 I filed an appeal of the above-mentioned judgment. Latter on September 17, 2008 I timely made request for the clerks transcripts and the reporters transcripts in the above entitled action.
4. On October 23, 2008 the Superior Court County of Sacramento Appellate Division informed me that we had not deposited the fees for the reporter's transcript and that if the fees were not deposited the record would be prepared without the reporter's transcripts.
5. The time period for timely depositing the fees for the reporter's transcripts expired without the fees for the reporter's transcript being deposited or other

arrangements being made and the record was prepared with the reporter's transcript.

6. I failed to timely deposit the fees for the reporter's transcript's or making other arrangements for the following reasons:

7. On or about October 17, 2008 the Sacramento County Sheriff, John McGuiness, and Sacramento County Sheriff deputy C. Shim #1028 posted an Eviction Restoration Notice on the front door of my residence located at 5617 Bonniemae Way Sacramento, California 95824 (the subject property) claiming that my family and I would be evicted on October 22, 2008 by virtue of a Writ of Execution for Possession of Real Property issued in this action. The posting of the Eviction Restoration Notice on the front door of my residence caused me to feel extreme emotional distress and prevented me from conducting the research necessary to freely and fully perfect this action. Instead of conducting research and perfecting this appeal I was distracted by the threat of being locked out of my home by the Sacramento County Sheriff. Instead of freely and fully working on perfecting this appeal I had to prepare and file documents in this action to protect my family from an unlawful seizure of our residence.

8. On October 20, 2008 I filed papers in this action to prevent the Sacramento County Sheriff from evicting me from my residence before this appeal could be heard on the merits. From October 17, 2008 until after the time to deposit the fees for the reporter's transcript I was unable to concentrate in this appeal because I was under severe emotional distress as a result of the Eviction Restitution Notice posted on my door by John McGuniess and C. Shim #1028.
9. On October 23, 2008 at approximately 9:00 a.m. Julia McGee and I were at the William R. Ridgeway Court House for a trial in the action entitled *McGee Et. Al., v. Seagraves Et. Al.,* case No. 06AS05145. Thomas Hogan is the attorney representing the defendants in the matter of *McGee v. Seagraves*. Thomas Hogan was not present in Court on October 23, 2008 and the matter was continued to October 24, 2008.
10. Latter on October 23, 2008 after leaving the above mentioned court hearing at approximately 10:00 a.m. Julia McGee and I arrived at my residence located at 5617 Bonniemae Way Sacramento, California 95824 when I arrived at my residence I saw two Sacramento County Sheriff deputies and Thomas McGee standing by the front door of my residence. I

also saw two unmarked sheriff cars parked in front of my residence. The garage door to my residence had been opened. The front door of my residence had been opened. I drove my car into the driveway of my residence and the two Sacramento County Sheriff deputies approached me armed with tasers and other deadly weapons. One of the deputies told me I was being evicted by the owner of the property and that the owner had retaken possession. One of the Sacramento County Sheriff deputies ordered me to remove the car I was driving from the driveway of 5617 Bonniemae Way Sacramento, California 95827. I backed the car out of the driveway because I was in fear of the deputies using their tasers or shooting me.

11. Latter on October 23, 2008 at approximately 10:02 a.m. Julia McGee got out of the car and asked the deputies if she could get some of our belongings out of the house. The deputies allowed Julia McGee to retrieve some of our belongings, but refused to allow me to even step on the property. Julia McGee was allowed approximately seven minutes to retrieve some of our property, then the deputies ordered her to leave the property.

12. After Julia McGee was ordered to leave the property we drove away. We had to rent a room at Motel 6, so that we could sleep and prepare for a trial the next day in the Superior Court. Julia McGee and I were not the only persons locked out of our residence on October 23, 2008 by Mark McGee, Thomas McGee, and the Sheriff of Sacramento County. My son, Jefferson McGee II and daughter, Jenean McGee were locked out of the residence, and kept from their property. My daughter Javon McGee and her son Elijah McGee also had property that was at 5617 Bonniemae Way Sacramento, California when the Sacramento County Sheriff locked us out of our residence.
13. On October 24, 2008 at about 8:00 p.m. I received a phone call from Julia McGee. Julia McGee informed me that Mark McGee and Thomas McGee had given her and my daughter Javon McGee the key to the house with the condition that I was not allowed to stay at the house.
14. From October 23, 2008 until the time required to deposit the reporter's transcript I was under extreme distress and I was afraid to stay at my residence for any extended time. I was in fear that the Sacramento County Sheriff department would come back and

arrest me or assault me. During the time I was locked out of my home I was prevented from receiving my mail, and prevented from having access to my legal files and therefore I was unable to fully and freely prepare for the October 24, 2008 trial in the matter of *McGee v. Seagraves* no. 06AS05145. As a direct result of being locked out of my home, I had not been able to locate this Court's October 23, 2008 order pertaining to the reporter's transcripts.

15. No party to the above-described judgment would be prejudiced to any significant degree by permitting a late filing of a motion to augment the record on appeal with the reporter's transcripts, as the Court still has jurisdiction to grant a rehearing on its own motion and the issue to be raised in the petition for rehearing is a significant one that the Court should address before further appeal of the matter is sought for a higher court.

16. Appellee is not opposed to the motion to augment the record on appeal with the reporter's transcript as evidence by not being present at the hearing on February 20, 2009.

17. I am not opposed to a motion to augment the record on this appeal as evidence by this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 9, 2009

_____

Jefferson A. McGee

DECLARATION OF JULIA A. McGEE SUPPORTING APPELLANTS REQUEST FOR REHEARING, AND REQUEST TO FILE A MOTION TO AUGMENT THE RECORD ON APPEAL WITH REPORTER'S TRANSCRIPTS.

I, Julia A. McGee, declare as follows:

1. I am an attorney pro per in the above-entitled action. I have personal knowledge of the matters contained in this declaration, and if called as a witness to testify, I could and would competently testify to them.
2. On September 3, 2008, the Superior Court, County of Sacramento Unlawful Detainer Division filed a judgment in the above-entitled case.

3. On September 9, 2008 we filed an appeal of the above-mentioned judgment. Latter on September 17, 2008 we timely made request for the clerks transcripts and the reporters transcripts in the above entitled action.
4. On or about October 17, 2008 the Sacramento County Sheriff, John McGuiness, and Sacramento County Sheriff deputy C. Shim #1028 posted an Eviction Restoration Notice on the front door of my residence located at 5617 Bonniemae Way Sacramento, California 95824 (the subject property) claiming that my family and I would be evicted on October 22, 2008 by virtue of a Writ of Execution for Possession of Real Property issued in this action. The posting of the Eviction Restoration Notice on the front door of my residence caused me to feel extreme emotional distress.
5. On October 20, 2008 we filed papers in this action to prevent the Sacramento County Sheriff from evicting me from my residence before this appeal could be heard on the merits. From October 17, 2008 until October 23, 2008 I was unable to concentrate on any work because I was under severe emotional distress as a result of the Eviction Restitution Notice posted on my door by John McGuniess and C. Shim #1028.

6. On October 23, 2008 at approximately 10:00 a.m. Jefferson McGee and I arrived at my residence located at 5617 Bonniemae Way Sacramento, California 95824 when we arrived at our residence I saw two Sacramento County Sheriff deputies and Thomas McGee standing by the front door of my residence. The garage door to my residence had been opened. The front door of my residence had been opened. Jefferson McGee drove the car we were in into the driveway of my residence, and the two Sacramento County Sheriff deputies approached us armed with tasers and other deadly weapons. One of the Sacramento County Sheriff deputies ordered Jefferson McGee to remove the car we were driving from the driveway of 5617 Bonniemae Way Sacramento, California 95827. Jefferson McGee backed the car out of the driveway. One of the deputies informed me that we had been evicted from the property and that I could not go into my residence.
7. Latter on October 23, 2008 at approximately 10:02 a.m. I got out of the car and asked the deputies if I could get some of our belongings out of the house. The deputies allowed me to retrieve some of our

belongings, but refused to allow Jefferson McGee to even step on the property. I was allowed approximately seven minutes to retrieve our property. When I entered into my residence I saw Mark McGee changing the locks to the front door of the residence. I walked completely through the house and looked in the backyard. The only people that I saw on the property that day were Thomas McGee, Mark McGee and the two sheriff deputies. Sora McGee was not at the property. After about seven minutes the deputies ordered me to leave the property.

8. After I was ordered to leave the property we drove away. We had to rent a room at Motel 6, so that we could sleep and prepare for a trial the next day in the Superior Court.
9. On October 24, 2008 at about 8:00 p.m. Thomas McGee and Mark McGee gave my daughter Javon McGee the keys to our residence (5617 Bonniemae Way Sacramento, California 95824) under the condition that Jefferson McGee was not allowed to stay at the property.
10. I am not opposed to a motion to augment the record on this appeal with the reporter's transcript as evidence by the declarations.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 9, 2009

_____

Julia A. McGee

Thomas HM. Hogan
Attorney at Law
720 Howe Ave, Suite 113
Sacramento, California 95825
Our File No:
Tel: (916) 929-2255

IN THE SUPERIOR COURT
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

Sora McGee, Trustee Plaitniffs	No. 07UD05837
Vs. Jefferson McGee, Julia McGee Defendants, _____/	Opposition to Motion for Summary Judgment Sept. 3, 2008 Dept. 88

Defendants, and particularly Jefferson McGee, have been defendants in multiple evictions. In almost every case, the defendants have filed a multiplicity of verbose pleadings which have been riddled with misstatements of both law and fact.

The motion now on file is a repeat of that which was filed earlier in the same case. The motion contains a number of denials and cross-claims, and concludes that the declaration of Sora McGee (Jefferson McGee's mother) is factually incorrect, however, the complaint as written alleges facts sufficient to sustain a cause of action for unlawful detainer. The motion itself admits that the 60-day notice supporting the action was served, although defendant claims the notice was emotionally hurtful. In that the notice to vacate came on behalf of defendant's mother, it may indeed be hurtful, but that does not make it illegal or ineffective.

Per Code of Civ. Proc. Section 437c, the defendant must show that there is no issue which, if the same were determined in plaintiff's favor, would permit plaintiff to

prevail in the case. The amended complaint is more than adequate to sustain a cause of action for unlawful detainer by alleging 10 Defendants had a landlord/tenant relationship with the trustee, 2) The agreement was terminated by 60-day notice, 3) Defendant failed to vacate, and retains possession of the property. The verified pleading, supported by the declaration of Jefferson McGee's mother is more than adequate to support the action.

The fact that the defendants disagree with some of these facts merely creates triable issue, it does not dispose of the case itself. Many of the statement of the defendants defy credibility, and this motion is obviously more intended to increase legal fees and create inconvenience for the trustee than to advance any legal theory.

The court may further note that the motion was served on Gary Link, esq., where Thomas Hogan has been attorney of record per substitution of attorneys and the Amended Summons and Amended Complaint, all of which were served on defendants.

Notwithstanding the failure of service, plaintiff files this opposition in the interest of proceeding with the action without delay.

Wherefore, Plaintiff prays the motion be denied, and the trial no set in the action for the same date proceed immediately.

Dated: August 27, 2008

Thomas M. Hogan
Attorney for Plaintiff

Jefferson A. McGee, Attorney Pro Per
5617 Bonniemae Way
Sacramento, California 95824
(916) 247-2413

Julia A. McGee, Attorney Pro Per
5617 Bonniemae Way
Sacramento, California 95824
(916) 391-0644

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
UNLAWFUL DETAINER DIVISION

SORA L. McGEE, Plaintiff, v. JEFFERSON A. McGEE, ET. AL., Defendants,	CASE NO. 07UD05837 NOTICE OF MOTION , MOTION FOR SUMMARY JUDGMENT AND SUMMARY ADJUDICATION AGAINST SORA L. McGEE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION; ATTACHED DOCUMENTS; DECLARATION OF DEFENDANT; SEPARATE STATEMENT OF UNDISPUTED FACTS; AND A REQUEST FOR JUDICIAL NOTICE.

Before:	**Hon. Patricia H. Wong**
Hearing:	**September 2, 2008**
Department:	**88**
Time:	**8:00 a.m.**
Action Filed:	**July 12, 2007**
Trial Date:	**September 3, 2008**

To: Sora L. McGee, Plaintiff and to Gary L. Link her Attorney:

You are hereby notified that on September 3, 2008 at 8:00 a.m. or as soon thereafter as Defendants can be heard at Department 88 of the above-entitled Court, at the courthouse located at 301 Bicentennial Circle Sacramento, California the defendants Jefferson A. McGee and Julia A. McGee will move the Court for an order granting a judgment in their favor dismissing plaintiff's action. This motion will be made of the grounds that there are no genuine issued of material facts as to plaintiff's cause of action and defendants are entitled to a judgment as a matter of law. Alternatively, if summary judgment is denied defendants move for summary adjudication against plaintiff with respect to unlawful detainer action, on the grounds that there are no genuine issues as to any material facts relating to the unlawful detainer action, there is no merit in continuing to prosecute this unlawful detainer action, and defendants are entitled to summary

adjudication as a matter of law. This motion will be based upon the provision of the Code of Civil Procedure § 437c, the declarations of Jefferson A. McGee and Julia A. McGee, the attached memorandum of points and authorities, the Separate Statement of Undisputed Facts, the Request For Judicial Notice, and all papers, records, and documents on filed herein and upon evidence, oral and documentary, to be presented at the hearing of this motion.

Dated: August 22, 2008

_____

Jefferson A. McGee

_____

Julia A. McGee

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants Jefferson A. McGee and Julia A. McGee submit the following memorandum of points and authorities for consideration of the Court in support of the attached Motion for Summary Judgment.

The moving parties are entitled to judgment as a matter of law because the attached papers show that there

is not a triable issue of fact as to the unlawful detainer action and there is no merit in continuing to prosecute this unlawful detainer action.

INTRODUCTION

The present action is on unlawful detainer. Sora L. McGee is plaintiff and Jefferson A. McGee and Julia A. McGee are defendants. Plaintiff is attempting to obtain a judgment of possession for the property known as 5617 Bonniemae Way Sacramento, California 95824 (the property) under the unlawful detainer statutes although she had admitted "[n]o lease agreement or rental agreement (oral or written) exists between plaintiff and defendants." Plaintiff and her attorney are using the Court as an instrument which to maliciously injure defendants. Defendants are requesting the Court for an order granting a judgment in defendants' favor dismissing plaintiff's action:

STATEMENT OF CASE

Background History

On or about August 25, 2005 Thomas Hogan; California State Senate; California State Assembly; California State Senator Don Perata; California State Assembly Member Fabian Nunez; California Governor Arnold Schwarzenegger; California Attorney General Bill Lockyear; the County of Sacramento; the Sheriff of

Sacramento County, Lou Blanas; the Sacramento County District Attorney, Jan Scully; Al Locher; the City of Sacramento; the City of Sacramento, Mayor Heather Fargo; Sacramento City Council persons Bonnie Pannell and Robbie Waters; the Sacramento City Police Chief Albert Najera; the City of Elk Grove; MMDD Sacramento Project A General Partnership; Asset Investment Managers, Inc.; Margaret Seagraves; Sacramento Delta Property Management, Inc.; and others began a conspiracy to punish defendants for exercising and asserting their rights secured by Title 42 USC §§ 1981, 1982 and 2000. On July 12, 2007 Gary Link, Mark McGee and Golden Valley Financial worked in concert to file this meritless action on behalf of plaintiff. On May 26, 2008 in furtherance of said conspiracy Gary L. Link, Mark McGee and Golden Valley Financial began working in concert with Thomas Hogan to harass, intimidate, and threaten defendants in an attempt to unlawfully force defendants away from the property as a punishment for exercising and asserting their federal constitutional rights.

Procedural History

On May 2, 2007 the Law Offices of Gary L. Link A Professional Law Corporation served defendant a copy of a 60-DAY TERMINATION OF TENANCY, WITH ATTACHMENT by United States mail. On July 12, 2007

Gary L. Link C.S.B. #088968 filed this unlawful detainer action without probable cause to do so. On July 18, 2007 Gary L. Link C.S.B. # 088968 had Julia McGee served with a copy of the complaint along with the summons. On July 23, 2007 defendant filed and served a Motion to Quash. Also, on July 23, 2007 Gary L. Link served a Notice of Request for Entry of Default on Julia McGee by United States mail. On July 30, 2007 defendants filed a Motion for Order for Payment of Costs and Attorney's Fees requesting costs and/or attorney fees in the amount of $21,027.00. On August 1, 2007 the Court Granted Defendants' Motion to Quash, and granted plaintiff leave to amend. On August 10, 2007 defendants filed a Motion for Summary Judgment and a Separate Statement of Undisputed Facts. On August 15, 2007 the Court heard defendants' Motion for Summary Judgment and denied the motion. On August 6, 2008 Thomas Hogan filed an Amended Summons and Complaint in this action. On Sunday August 10, 2008 at approximately 1:00 p.m. Julia A. McGee was served the above amended complaint after arriving home with her daughter and grandson. On August 12, 2008 Thomas Hogan served the Amended Summons and Complaint on Jefferson A. McGee in department 59 of this Court during a Mandatory Settlement Conference in this Court's case of *McGee, Et. Al., v. Sacramento Delta Property Management,*

Inc., Et. Al., No. 06AS05145. On August 13, 2008 Jefferson A. McGee received another copy of the Amended complaint by United States mail from Thomas Hogan. On July 14, 2008 defendants filed an Answer to the Amended Summons and Complaint. On August 18, 2008 this Court set trial for September 3, 2008 at 10:00 a.m. Defendants are now requesting this Court for an order granting judgment in defendants favor and dismissing plaintiff's action.

FACTS

i.

On July 12, 2007 plaintiff filed this action in this Court.

ii.

Plaintiff did not allege the existence of a lease agreement or rental agreement (oral or written).

iii.

No lease agreement or rental agreement (oral or written) exists between plaintiff and defendants.

iv.

Defendants did not enter into possession of the property at issue in this action under a lease agreement or rental agreement (oral or written).

v.

The complaint cannot be amended in good faith to state a cause of action for an unlawful detainer action.

vi.

Defendant Jefferson A. McGee has spent approximately 77 hours defending this action.

vii.

Defendant Julia A. McGee has spent approximately 14 hours defending this action.

viii.

The filing and prosecution of this Unlawful Detainer action is not warranted under existing law, and cannot be supported by good-faith argument for extension, modification, or reversal of existing law.

ix.

The filing of the complaint was done without probable cause and for the purpose of harassing and maliciously injuring defendants to punish them for exercising and asserting their rights secured by Title 42 USC §§ 1981, 1982, and 2000..

x.

The filing of the Complaint on behalf of Sora McGee "Trustee of the McGee Family Trust" and allowing Mark McGee to sign the verification constitutes a conflict of interest, a fraud on this Court, and a violation of California Code of Civil Procedure §§ 446 and 1166.

xi.

The filing of the amended complaint on August 6, 2008 was frivolous, meritless, and done in bad faith.

xii.

The service of the 60-day Termination Notice on May 2, 2007, the filing of the complaint on July 12, 2007, the serving of the Request for Entry of Default on July 23, 2007, the filing of the Amended Complaint on August 6, 2008, the service of the Amended Complaint on August 10, 12, 13, 2008 harassed, threatened and intimidated defendants.

xiii.

The filing of the Complaint and the prosecution of this action was done with the unlawful intent to cause defendant to abandon the premises.

xiv.

The filing and prosecution of this action is interfering with the efficient administration of justice in this Court.

STANDARD OF REVIEW

A defendant moving for summary judgment or summary adjudication by attacking a specific cause of action in the complaint may meet its initial burden by (1) conclusively negating one or more element of that cause of action or (2) using the plaintiff's response to discovery or other evidence to show that plaintiff does not possess, and cannot reasonably obtain necessary evidence to support that cause of action. See *Aguliar v. Atlantic Richfield Co.* (2001) 25 C 4th 826, 849.

SUMMARY OF ARGUMENT

Summary judgment is appropriate in this action because it has been admitted by plaintiff and defendants that [no] lease agreement or rental agreement exists between plaintiff and defendants, and that "[d]defendants did not enter into possession of the property at issue in this action under a lease or rental agreement. The existence of a landlord-tenant relationship is a condition precedent to an unlawful detainer action, and must be stated in the complaint. *Francis v. West Virginia Oil Co.* (1917) 174 C 168, 162 P. 394. The complaint must allege: (1) the existence of a lease or rental agreement (oral or written), and (2) that the tenant entered into possession under it, no longer has the right to possession, and yet remains in possession. If the term has expired and the tenant is still in possession the landlord-tenant relationship, for purpose of unlawful detainer statutes, continues until the tenant surrenders possession. *O'Dell v. Buttrick* (1899) 126 C 55, 59 P. 133. In this action plaintiff's amended complaint was filed in bad faith. Plaintiff alleges in paragraphs 5 and 6 of the amended complaint that on or about March 6, 2006 defendants made an oral agreement to rent the premises for a term not to exceed two weeks, agreed to pay no rent, and that the agreement was made with her agent. Plaintiff also alleges in paragraph 6, the agreement was latter

changed in September 2006 to a month-to-month agreement for rent in the amount of $666.00 per month. The above-mentioned allegations are false and were made in bad faith. On August 15, 2007 the Court heard defendants' request for summary judgment. Plaintiff served and filed a Separate Statement of Undisputed Facts in support of their motion for summary judgment. Paragraph 3 of the Statement of Undisputed Facts states: "No lease agreement or rental agreement (oral or written) exists between plaintiff and defendants." (See Request for Judicial Notice.) On August 6, 2008 plaintiff claimed an oral agreement for a month-to-month tenancy existed in September 2006. It is clear the amended complaint was made in bad faith, is false, and fabricated to state a cause for unlawful detainer. Also, plaintiff's declaration states defendants orally agreed to pay rent for $675.00 per month, but the amended complaint stated defendants agreed to pay $666.00 per month. (See declaration of Sora McGee ¶ 3 filed August 6, 2008.) It is clear that no landlord-tenant relationship exists because based on the undisputed facts in this case no rental or lease agreement existed between plaintiff and defendants, therefore plaintiff cannot in good faith continue to prosecute this action. There are no triable issues of facts as to any unlawful detainer action. No tenancy exists between plaintiff and defendants. As a

matter of law defendants are entitled to a judgment in their favor dismissing plaintiff's unlawful detainer action.

ARGUMENT

This Court should enter a judgment in defendants' favor dismissing plaintiff's unlawful detainer action because it is undisputed that no rental agreement (oral or written) exists between plaintiff and defendants and the action is being prosecuted in bad faith. The undisputed facts in this action conclusively negates a cause of action for unlawful detainer, and demonstrates that this action is being prosecuted in bad faith. There are no genuine issues of material facts in this action and therefore defendants are entitled to summary judgment as a matter of law.

CONCLUSION

For the reasons stated above, defendants respectfully request the Court to enter judgment in tier favor, dismissing plaintiff's unlawful detainer action.

Dated: August 22, 2008

_____

Jefferson A. McGee

_____

Julia A. McGee

Declaration of Jefferson A. McGee

I, Jefferson A. McGee, declare the following:

1. I am a Defendant in the above-entitled action.
2. If I were sworn as a witness, I could testify completely to the facts set forth in this declaration.
3. I admit that no lease agreement or rental agreement (oral or written) exists between plaintiff and I.
4. I admit that I did not enter into possession of the property at issue in this action under a lease agreement or rental agreement (oral or written).
5. I admit that the amended complaint was made in bad faith.
6. On or about September 26, 2005 Thomas Hogan and other person unlawfully entered and detained my property located at 7917 Bruceville road Sacramento, California 95823 under the guise of a writ issued by this Court. In fact Thomas Hogan and other persons entered and detained my property without a writ issued by any court.
7. On November 30, 2005 I filed a complaint in the United States District Court for the eastern District of California alleging Thomas Hogan and over thirty more persons conspired to deprive me of my constitutionally protected civil rights. I have an interest in the Richard C. and Sora L. McGee Trust. Thomas Hogan's legal representation of Sora McGee Trustee of the Richard C. and Sora L. McGee Trust

constitutes a conflict of interest because Thomas Hogan's interests and my interests conflict.

I declare under penalty of perjury under the las of the State of California that ch foregoing is true and correct.

Dated: August 22, 2008

_____

Jefferson A. McGee

Declaration of Julia A. McGee

I, Julia A. McGee, declare the following:

1. I am a Defendant in the above-entitled action.
2. If I were sworn as a witness, I could testify completely to the facts set forth in this declaration.
3. I admit that no lease agreement or rental agreement (oral or written) exists between plaintiff and I.
4. I admit that I did not enter into possession of the property at issue in this action under a lease agreement or rental agreement (oral or written).
5. I admit that the amended complaint was made in bad faith.
6. It is my understanding that in July of 2007 when Mark McGee signed and verified the complaint he

was working as a licensed real estate agent of Golden Valley Financial. It is my understanding that Mark McGee has never been an authorized agent of Sora L. McGee because Mark McGee has never been a licensed real estate broker.

7. On or about April 3, 2006 Thomas Hogan and other persons unlawfully entered and detained my property located at 8553 Iris Crest Way Elk Grove, California 95624 under the guise of a judgment issued by this Court. In fact Thomas Hogan unlawfully entered and detained my property without a valid judgment issued by any court.

I declare under penalty of perjury under the las of the State of California that eh foregoing is true and correct.

Dated: August 22, 2008

_____

Julia A. McGee

Thomas M. Hogan, Esq. SBN: 153926
720 Howe Avenue, Suite 113
Sacramento, CA 95825
916-929-2255

Superior Court of California County of Sacramento
301 Bicentennial Circle
Sacramento, CA 95826
Carol Miller Justice Center

Plaintiff: Sora McGee, Trustee of the Trust of Richard C. & Sora McGee
Defendants: Jefferson McGee, Julia McGee
Does 1 to 100

Complaint Unlawful Detainer
Amended Complaint
07UD05837

Jurisdiction: Action is a Limited Civil Case does not exceed $10,000

1. Plaintiff Sora McGee, Trustee of the Richard C. & Sora McGee Trust alleges cause of action against defendants: Jefferson McGee and Julia McGee
2. A. Plaintiff is other TRUST
3. Defendants named above is in possession of the premises located at 5617 Bonniemae Way Sacramento, California 95824, County of Sacramento
4. Plaintiff's interest in the premises is as owner.
5.
6. On or about March 6, 2006 Jefferson McGee and Julia McGee agreed to rent the property as other tenancy term not to exceed 2 weeks. On an oral agreement with plaintiff's agent. The agreement was latter changed as follows: During September 2006 defendants verbally agreed to a month-to-month agreement for rent I the amount of $666.00 per

month. Defendants paid one month of rent per this agreement. The written agreement is not in the possession of the landlord or the landlord's employee or agents.

7. Defendants Jefferson McGee and Julia McGee were served the following notice on the same date and in the same manner: 60-day notice to quit on 7/02/07. The notice included an election of forfeiture. A copy of the notice is attached and labeled exhibit 2.
8. The notice in item 7a was served on defendants named in 7a as follows: by posting a copy on the premises on May 3, 2007 and giving a copy to a person found residing at the premises and mailing a copy too defendants at the premises on May 3, 2007 because no person of suitable age or discretion can be found there. Proof of service to 7a is attached and labeled Exhibit 3.
9.
10.
11. The fair rental value of the premises is $22.20 per day.
12. Defendants continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b).
13.
14.
15.
16.
17. Plaintiff requests damages at the rate stated in item 11 from 7/02/07 for each day that defendants remains in possession through entry of judgment; statutory damages up to $600 for the conduct alleged in item 12 and such other relief as the court may deem roper.
18.
19. An unlawful detainer assistant did not for compensation give advice or assistance with this form.

Date: July 30, 2008
Thomas M. Hogan

VERIFICATION

August 1, 2008
Sora McGee, Trustee

Law Offices of Gary L. Link, Attorney at Law
A Professional Law Corporation
725 30th Street, Suite 107
Sacramento, California 95816
(9160 447-8101
CSB 088968

Plaintiff: Sora McGee, Trustee of the Trust of Richard C. & Sora McGee
Defendants: Jefferson McGee, Julia McGee
Does 1 to 10

Complaint Unlawful Detainer
07UD05837

Jurisdiction: Action is a Limited Civil Case does not exceed $10,000

1. Plaintiff Sora McGee, Trustee of the Richard C. & Sora McGee Trust alleges cause of action against defendants: Jefferson McGee and Julia McGee
2. A. Plaintiff is other TRUST
3. Defendants named above is in possession of the premises located at 5617 Bonniemae Way Sacramento, California 95824, County of Sacramento
4. Plaintiff's interest in the premises is as Trustee.
5.
6. On or about March 2006 Jefferson McGee and Julia McGee made an oral agreement with plaintiff's agent. The defendants not named in item 6a are subtenants, assignees, alleged on information and belief to be unknowns, yet residing at the premises without plaintiff's permission or consent.
7. Defendants Jefferson McGee and Julia McGee were served the following notice on the same date and in the same manner 60 Day Notice of Termination of Tenancy on 7/02/2007. The notice included an

election of forfeiture. A copy of the notice is attached and labeled exhibit 2.

8. The notice in item 7a were served on the defendants named in item 7a as follows: by posting a copy on the premises on 5/03/07 and giving a copy to a person residing at the premises and mailing a copy to the defendant on 5/2/07 because no person of suitable age or discretion can be found there.
9.
10.
11. The fair rental value of the premises is $31.67 per day.
12.
13.
14.
15. Other allegations are stated in attachment 15, attachment 15, and attachment 16.
16. Plaintiff accepts the jurisdictional limit if any of the court.
17. Plaintiff requests forfeiture of the agreement, damages at the rate stated in item 11 from 7/02/2007 for each day defendants remain in possession through entry of judgment. And for such other and further relief as the court deems just and proper.
18.
19. An unlawful detainer assistant did not for compensation give advice or assistance with this form.

Dated: 7/11/07
Gary Link

See Attached Verification of Marcus McGee

07UD05837
VERIFICATION UNDER PENALTY OF PERJURY-
UNLAWFUL DETAINER

IF YOU ARE A PROPERTY MANAGER OR AUTHORIZED AGENT FOR THE OWNER OF THE PROPERTY SIGN THIS TOP VERIFICATION

1. I am the property manager or authorized agent for the owner landlord/lessor of the real property described in the Complaint for Unlawful Detainer and owned or leased by the Plaintiff/owner/Landlord/Lessor of the Premises.
2. If the Plaintiff is described in the Complaint as a Corporation, I declare that I am an officer of the Plaintiff corporation, a corporation organized under the laws of the State of California, and I have been authorized to execute this verification on its behalf.
3. I am duly and expressly authorized to verify said complaint of the plaintiff's behalf. Said complaint for unlawful detainer is attached hereto. I am verifying said complaint for Unlawful Detainer on behalf of the owner or landlord/lessor because the facts stated therein are known by myself and may not be known to the owner or landlord/lessor.
4. I have read said complaint for Unlawful Detainer and know the contents thereof.
5. I certify that the same is true of my own knowledge except as to those matters, which are stated therein upon my information and belief, and as to those matters, I believe them to be true.
6. I declare under penalty of perjury under the laws of the State of California that I am an adult and at least 18 years of age, and that the foregoing is true and correct and that if called as a witness, I could do so competently. This declaration under penalty of perjury was executed in Sacramento, California on the below stated date.

Dated: 07/11/07

Marcus McGee

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFERY McGEE, et. al., No. 06-cv-0495-MCE-GGH-PS

Plaintiff,

v. ORDER

MARGARET SEAGRAVES, ET AL.

Defendants,

_____/

On June 2, 2006, the magistrate judge filed Findings and Recommendations herein which were served on the parties and which contained notice that any objections to the Findings and Recommendations were to be filed within ten (10) days. No objections were filed.

Accordingly, the Court presumes any findings of fact are correct. See Orland v. U.S., 605 F.2d 207, 208 (9th Cir. 1999). The magistrate judge's conclusions of law are reviewed de novo. See Britt v. Simi Valley unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

Although it appears from the file that Platiniff's copy of the Findigns and Recommendations was returned, palitniff was properly served. It is the Plaitnff's responsibility to keep the Court apprised of his current

address at all times. Pursuant to LocalRule 83-182(f), service of documents at the record address of the party is fully effective.

The Court has reviewed the applicable legal standards and, good cause appearing, concludes that it is appropriate to adopt the proposed Findings and Recommendations in full.

Accordingly, IT IS SO ORDERED that:

1. The Proposed Findings and Recommendations filed June 2, 2006, are ADOPTED;
2. The state action is summarily remanded tot eh Sacramento Superior Court;
3. The clerk shall serve a certified copy of this Order to the clerk of the Sacramento County Superior Court, and reference the state case number (06UD01611) in the proof of service; and
4. The Clerk is directed to close this case.

Dated: July 17, 2006

Morrison C. England, Jr.

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFERY McGEE, et. al., No. 06-cv-0495-MCE-GGH-PS

Plaintiff,

v. ORDER and

MARGARET SEAGRAVES, ET AL. FINDINGS &

Defendants, RECOMMENDATIONS

_____/

Petitioners, proceeding pro se, filed on March 9, 2006, a" Notice for Petition For Removal" of an unlawful detainer action filed against them in state court.[1] Also before the court is a motion to remand and request for sanctions, filed April 6, 2006, by respondents County of Sacramento, Blanas and Scully. The case has been referred to this court by Local Rule 72-302(21), pursuant to 28 U.S.C. §636(b)(1). These matters were heard on the court's May 11. 2006 law and motion calendar. Petitioners appeared pro se. Jenny Rim appeared for theses respondents. After reviewing the filings and hearing oral argument, the court now issues the following findings and recommendations.

[1] Petitioners have also filed an in forma pauperis application: however, the court will not rule on it.

BACKGROUND

Petitioners were sued in state court in an unlawful detainer action for non-payment of rent, by Margaret Seagraves. In response, petitioners have filed the instant petition for removal, attempting to add 13 new respondents who were not parties to the state court action, and alleging new claims. Petitioners allege that respondents have violated their civil rights under 42 U.S.C. §§ 1981, 1982, and 2000 through discrimination against African Americans. As a result of this discrimination, petitioners claim they have been unable to earn an income and therefore cannot pay their rent. Compl. At 2-3. Petitioners also assert that they are being evicted based on their race. Id. At 4. It is further alleged that respondents "have conspired or aided and incited other persons to commit the following wrongs against plaintiff; attempted murder; kidnap; attempted kidnap; torture; assault with a deadly weapon; assault; battery; intimidation by threats of violence; extortion; false imprisonment; malicious prosecution; robbery; burglary; unlawfully searched and seizure," causing petitioners to lose income. Id.U at 5. Petitioners proceed to describe their litigation history in detail, blaming various legal incidents on law pertaining to unlawful detainer actions would not allow them to defend the state court action based on deprivation of civil rights by state officials.

DISCUSSION

I. Remand

Respondents bring their motion for remand on two grounds, that they were not parties to the state court

unlawful detainer action, and that petitioners cannot satisfy the two part test for removal under 28 U.S.C. § 1443.

The only party in this action who was a party in the state court action that petitioners are trying to remove is Margaret Scagraves, apparently the landlord or owner of the premises, who initiated the unlawful detainer action against petitioners. This respondent has not made an appearance in this action. Respondents County of Sacramento, Lou Blanas, and Jan Scully are not parties in the unlawful detainer action and therefore have no standing to make an appearance in this case. Third-party Plaintiffs/Petitioners (defendants in the state action) simply named additional parties in their petition for removal. No third-party complaint has been filed. Of course, one can only remove parties to federal court if they were parties in the removed action. However, the appearing third party defendants/respondents were reasonably cautious in attempting to appear since for some reason the Clerk's office had given petitioners summons to serve all named parties. Therefore, the court will sua sponte examine its own jurisdiction over this action.

A district court has an independent duty to examine its own jurisdiction and remand a removed action "since removal is permissible only where original jurisdiction exists at the time of removal or at the time of entry of final judgment ..." Sparta Surgical Corp v. national Ass'n of Securities Dealers, Inc. 159 F 3d 1209, 1211 (9th Cir. 1998), quoting Lexicon, Inc. v. Milberg Weiss Bershand Hynes & Lerach 523 U.S. 26, 43, 118 S. Ct. 956, 966 (1998); FW/PBS, Inc. v. City of Dallas 493 U.S. 215, 229, 110 S. Ct.

596, 606-07 (1990); Harris v. Provident Life and Acc. Ins. Co. 26 F 3d 930, 932 (9th Cir. 1994).

This court has no jurisdiction over unlawful detainer actions which are strictly within the province of the state court. Petitioenr's apparent attempt at creating federal subject matter jurisdiction by simply assign parties, claims and defenses to a petition for removal will not succeed as third-party claims and affirmative defenses are not permitted in unlawful detainer actions. Superior Motels, Inc. v. Rinn Motor Hotels, Inc. 195 Cal. App. 3d 1032, 1066, 241 Cal. Rptr. 487 (1987).

Removal jurisdiction statutes are strictly constructed against removal. See Libhart v. Santa Monica Dairy Co., 592 F. 2d 1062, 1064 (9th Cir. 1979). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." Gaus v. Miles, 980 F. 2d 564, 566 (9th Cir. 1992). "The burden of establishing federal jurisdiction falls on the party invoking removal." Harris v. Provident Life and Accident Ins. Co., 26 F3d 930 (9th Cir. 1994) (quoting Gould v. Mut. Life Ins. Co. of New York, 790 F2d 769, 71 (9th Cir. 1986)).

Petitioenrs' basis for removal is 28 U.S.C. § 1443. The case is not removable pursuant to 28 U.S.C. § 1443, which has a two pronged test for removal. First, "it must appear that the right allegedly denied the removal petitieonr arises under a federal law 'providing for specific civil rights stated in terms of racial equality.'" Johnson v. Mississippi 421 U.S. 213, 219 95 S. Ct. 1591, 1595 (1975) (quoting Georgia v. Rachel 384 US 780, 792 (1966)); see also Davis v. Superior Court of California 464 F2d 1272 (9th Cir. 1972) (removal of state prosecution to federal court under §

1443 is specific and narrow; claims must relate to statutes explicitly protecting equal racial civil rights). Second, it must appear "that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of the State." Johnson, 421 U.S. at 220 (citation omitted). This generally requires a state low or constitutional provision that denies the defendants an opportunity to raise a federal right. Id. As the Ninth Circuit observed, "The Supreme Court... has given section 1443 a restrictive interpretation." California v. Sandoval, 434 F2d 635, 636, 636 (9th Cir. 1970) (per curiam). The instant matter does not implicate claims relating to explicit statutory enactments protecting equal racial civil rights, but merely concerns as unlawful detainer action for non-payment of rent.

Even if this removal had been attempted under 28 U.S.C. § 1441, a defense to an action, based on constitutional rules of general applicability, is not a sufficient basis to remove an affirmative defense based on federal law ... nor one based on federal preemption ... renders an action brought in state court removable.") Petitioners have not shown that they are unable to raise their federal constitutional rights in state court.

Accordingly, the court finds that remain is appropriate because the case is not one which arises under federal law. Pursuant to 28 U.S.C. §1447© , where it appears that the court lacks subject matter jurisdiction, the court shall make an order for remand. The petition for removal and the state court record filed in this case demonstrates that the underlying proceedings are not removable to this court. No jurisdictional basis for removal of this state action appearing remand is appropriate.

II. Sanctions

Respondent request sanctions because this is the second attempt by McGee to remove an unlawful detainer action to this court. See Hildebrand v. McGee Civ. S-00-1578-GEB-DAD-PS, aff'd 19 Fed. Appx. 582 (9th Cir. 2001); Request for Judicial Notice, filed April 6, 2006.

Because respondents are not parties to the unlawful detainer action, and hence not parties herein, their request for sanctions must be denied. Petitioners were warned at hearing, however, that they have filed numerous frivolous actions in this court, and that if they continue to abuse the federal courts with frivolous filings, they may be declared vexatious litigants in future.

CONCLUSION

Accordingly, IT IS ORDERED that respondent's April 6, 2006 motion for sanctions is denied.

IT IS HEREBY RECOMMENDED that:

1. The state action be summarily remanded to the Sacramento County Superior Court;
2. The Clerk serve a certified copy of this order to the clerk of the Sacramento County Superior Court, and reference the state case number (06UD01611) in the proof of service; and
3. The Clerk be directed to close the case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §636(b)(1). Within ten (10) days after being served with these

findings and recommendations, any party may filed written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten (10) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F2d 1153 (9th Cir. 1991).

Dated: 6/2/06

Gregory G. Hollows

United States Magistrate Judge

US DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – LIVE SYSTEM (SACRAMENTO)

CIVIL DOCKET CASE #: 2:06-cv-00495-MCE-GGH

Internal use Only

McGee et. al. v. Seagraves et. al.,

Assigned to: Judge Morrison C. England, Jr.

Referred to: Magistrate Judge Gregory G. Hollows

Case in other court: 02-80037

Cause: 28:1441 Petitin for Removal – Civil rights Act

Date Filed : 03/09/2006

Date Terminated: 07/17/2006

Jury Demand: None

Nature of Suit: 440 Civil rights: Other

Jurisdiction: Federal Question

Plaintiff

Jeffery McGee

8553 Iris Crest Way

Elk Grove, California 95624

PRO SE

Julia McGee

8553 Iris Crest Way
Elk Grove, California 95624
PRO SE

Defendant
Margaret Seagraves
California State Senate
California State Assembly
Don Perata – California State Senator
Fabian Nunez – California State Assembly Member
Arnold Schwarzenegger – California Governor
William Lockyear – California Attorney General

Represented by Robert L. Chalfant
Randolf Cregger & Chalfant, LLP
1030 G Street
Sacramento, California 95814
LEAD ATTORNEY TO BE NOTICED

Jenny Jooyun Rim
Randolf Cregger & Chalfant, LLP
1030 G Street
Sacramento, California 95814
TERMINATED: 08/21/2006
ATTORNEY TO BE NOTICED

Defendant

City of Sacramento

Cioty of Elk Grove

Heather Fargo

Jan Scully

Lou Blanas

Represented by Robert L. Chalfant
Randolf Cregger & Chalfant, LLP
1030 G Street
Sacramento, California 95814
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